Argument
for
District Attorney
Joseph C. Pelletier

ARGUMENT

FOR

DISTRICT ATTORNEY
JOSEPH C. PELLETIER
(Respondent)

BY

JAMES A. REED
(U. S. Senator)

AND

LOUIS C. BOYLE
(Ex. Atty.-Gen'l of Kansas)

WASHINGTON PRESS 242 DOVER STREET

AN ANSWER

For more than a decade, the man on whom executive officers, supreme directors, and national and state officers have depended for judgment, initiative and guidance in the successive steps which have given the Knights of Columbus the largest membership in the United States of any order based on Christian principles, whose objects, ritual and accomplishments have been open to public scrutiny, whose primacy as an auxiliary in all war work and a subsequent program of educational, civic, patriotic and rehabilitational endeavor is ideal, has been Supreme Advocate Joseph C. Pelletier of Boston.

That this record of continuous success in diverse fields of leadership might bring envy and hatred could be expected; but the actuality, ostentatiously planned against this man, but really leveled against the forces and agencies he represents, passes comprehension.

As District Attorney of a great American metropolis, elected and re-elected again and again, during the last twelve years he has been officially responsible for passing on eighty thousand cases, having considered at least 200,000 more. From this multitude thirty-one were originally selected by the politicans representing the organized effort to discredit him, each and every one being sworn to as sufficient to warrant his removal. At the last moment, without explanation or excuse, more than one-third of these cases were withdrawn.

Those who know Mr. Pelletier will appreciate that in every capacity of life, but especially as the people's lawyer of one of the great jurisdictions of the country, it has been always his policy to have a human interest in each individual case; to consider not only the justice which the wrong-doer deserves, but even more—the mercy which the Divine Fountain Head of law, government and justice, decrees that every human being receive.

Joseph Pelletier is of the masses and for the masses; none dares speak slightingly of his friend in his hearing; to love his friends and to be loved by them is his happiness. His is not the kind of brotherhood which is isolated, fugitive, unexercised, but of that sturdiness which fights when and where the need may be. With such a record Joseph C. Pelletier approaches the tribunal of earthly justice as he will that of the last judgment, comforted with the knowledge that this judgment will be based on his record.

JAMES A. FLAHERTY, Supreme Knight

Supreme Judicial Court for the Commonwealth.

RUGG, C. J., BRALEY, DECOURCY, CARROLL, JENNEY, JJ.

No. 4145.

J. WESTON ALLEN, Attorney General, *Petitioner*,
(by information)

vs.

JOSEPH C. PELLETIER, District Attorney, *Respondent*.

VOLUME XX.

Boston, January 23, 1922.

The Court came in at 9:30 o'clock.

ARGUMENTS FOR THE RESPONDENT.

RUGG, C. J. For convenience of counsel in the arguments, the Court will announce that at quarter past eleven this morning an intermission of fifteen minutes will be taken until half past eleven.

MR. BOYLE:

MR. BOYLE: If your Honor please, it now devolves upon counsel to assist the court in analyzing the facts of this case. We are not now so much concerned about the law as we are with a right understanding of these facts, and if I am possessed of sufficient candor, knowing this record as I do, I may be of some help to the court; it is my purpose, if your Honors please, to analyze certain of these specifications. If I can say aught that will be helpful in the interest of truth and justice, then I will have served you in your task.

Before undertaking the items themselves, may I suggest to your Honors the necessity of visualizing this case from the standpoint of this man in his office. We cannot take these facts and analyze them from the standpoint of the calm, judicial atmosphere of this court and get the right perspective. We must take these facts and place them back into the atmosphere of this busy throbbing office where a vast multitude of men and incidents are daily passing. This is a human problem, I do not know whether any of you gentlemen have ever occupied the position of District Attorney. I know that Senator Reed has, and I know that I have, and I know, if your Honors please,

that when you come to consider the facts that come before a District Attorney, especially in a great city like this, where instant decisions are frequently necessary and where error of judgment is, of course, possible, we must be very careful when we search out the moral elements of conduct.

I first want to call your attention to a group of cases wherein assistant District Attorneys are involved. There are four of them: The Soracco, Nee, Stone and Mancovitz cases. Let me briefly call your attention to these items.

The Soracco case: This case is brought under four paragraphs of the complaint. Paragraphs 30 and 32 need give us no concern. Those paragraphs involve the District Attorney himself; that is to say, that he directed of his own motion certain things. There is not even a suggestion in the record that the District Attorney himself had aught to do with the disposition of the Soracco case, or that the matter was called to his attention prior to the action taken by Assistant District Attorney Mancovitz. Paragraphs 34 and 35 charge that discovering that the deputies did certain things he did not discharge them, and that is the phase of the charge in the Soracco case to which I now address my attention. In fact the only phase that could be involved under the proof. The charge was that Soracco, a young man of twenty-two or twenty-four years of age was running a liquor nuisance. The matter came up before Assistant District Attorney, Mancovitz. This was one of the late cases, 1921. There was one witness on the witness list, to wit: Officer Campbell. When the matter came up for consideration the attorney for young Soracco was present. It is in evidence from Officer McTiernan that this attorney made some statement; it is in evidence before your Honors that the father of this young man owned the place, although the young man's name was on the license; it is in evidence that the place changed hands immediately after this incident in the District Attorney's office. There is no evidence as to just what statements were made to Mancovitz. It is sufficiently in evidence that the young man did not own it. Now, what were the considerations that prompted Mancovitz? I don't know. But insofar as this record is concerned, the presumptions are in his favor, that he was actuated by perfectly proper motives under all the facts that were submitted to him. Now, Pelletier had nothing whatever to do with the case up to this stage. Later on, some time after that—some two months—Commissioner Curtis, I think the name is—when I make an error I would be glad to be corrected, because I can only help you if I keep within the four corners of this record—Commissioner Curtis wrote to Mr. Pelletier and said that there had been a complaint made about this very place, and calling his attention to the fact that the case had been disposed of without trial. Now what was done by Pelletier in response to that letter doesn't appear in this record. But if Pelletier had not taken proper steps to correct any misconduct, or error, in his office, you can rest assured that the diligent Attorney General would have presented evidence in reference thereto. Here is the sole and only case involving a liquor charge that is before this Court, and the presumptions are in favor of Mr. Pelletier taking proper steps, if any

mistake had been made. And this is the only incident in the hundreds of cases that Mancovitz must have handled.

Here, then is the fact: Mancovitz recommended to the trial court that the Soracco case be disposed of without trial. No improper motive on the part of Mancovitz is even suggested. It must be presumed that he was actuated by a proper motive. True it is, he may have acted unwisely. Now, Pelletier's fault, if any, lies in the sole circumstance that he did not discharge Mancovitz after he learned that this case had been disposed of in the manner stated. What Pelletier did in reference to the matter is not indicated. Every presumption is to the effect that he took such action as was proper in the premises. We do know this: This is the sole incident in which David Mancovitz is involved touching official conduct. Of the many hundred cases disposed of by this faithful assistant but one has been found wherein it is claimed he committed error—no wrong or immoral conduct is imputed to him. The worst that can be said is that he made a mistake. For failure to discharge him, Joe Pelletier is to be ousted from his high office—this in face of the further fact that the Soracco case, out of literally hundreds of liquor cases, is the only liquor case that it is even suggested was improperly dealt with. As already indicated there is no suggestion of immoral conduct, no political pull, no favoritism—nothing but the naked fact that the case was disposed of without trial.

In reviewing this case, your Honors, please remember that it was shown to Mancovitz, the Assistant District Attorney, that the accused was a boy twenty-two years old; he had no interest in the place; the place changed hands within a few days after the case was disposed of; there was but one witness shown on witness slip. These and other matters furnish the background of suggestion as to possible reasons for the action taken. Of one thing we are very sure—there is no suggestion of unworthy motive.

That is all there is to the Mancovitz case.

Here is the Nee case, in which young Fred Sheenan is concerned. He refused to prosecute. Some men were out in a field, seeing an officer coming they ran down an open cellar way. This is the case where they were charged with breaking in No. 18 cellar way and ran into the adjoining cellar way which was No. 20. You will remember the witness, we can all remember that name because it is the name of a man somewhat familiar to our younger days—John L. Sullivan—an officer who had been in the service of this great city for years, and is still in its service—he was the complaining officer. Mr. Pelletier's name is not touched in this case only in that he did not discharge Sheenan after he learned the fact that the case was dismissed. The truth is there is not a word of testimony that the matter was ever called to his attention. This case comes under one of those phases of the complaint wherein it is charged that an assistant district attorney did something wrong and he, Pelletier, did not discharge him. Now what are the facts? You must here visualize in your mind this young man with a multitude of cases, getting them ready to send to trial—it is in volume 13, if your Honors please, if you are looking for the case. A lawyer by the name of McDonald represented Nee and these other men. He

made a statement in the presence of the arresting officer. This officer Sullivan, testifies here before your Honors to the effect that the things that Mr. McDonald stated to Sheenan as a reason why this case should not be prosecuted were true, and he further added that the principal witness in the case was dead. You are not here to try the case itself. You are here to pass judgment upon the conduct of the official. He may have made a mistake. That is not your concern. It is the motive that prompted the conduct that concerns you.

For the moment, however, let us touch the facts of the case. Sullivan says that there were two boards off of this cellar way, not sufficient for a man to pass through. When they were taken off he does not know. Sullivan says there were Moxie boxes piled up on the inside of cellar 18 where these boards were taken off so that an entry could not be made. The day clerk says that the Moxie boxes were not there.. I know nothing about that. I am telling you, however, what Sullivan told this man Sheenan, and that is the thing that controls here. What were the facts he presented to Sheenan? Officer Sullivan says that he told him these facts and that the case ought not to be prosecuted.

Now, the young man nolled the case. The only place on earth where it can be claimed that Mr. Pelletier came in contact with that case is that one of the officers of the parole board, wrote Mr. Pelletier and said if this man, Nee, plead guilty or was convicted, they would revoke his parole. That letter it will be charged, I assume, is the notice which Pelletier had of the pendency of this case. And yet, as practical men, must we not know that, in the multitude of things this could not be a matter which would remain in his mind? Therefore when you come to this case the only incident there is in reference to it is that Mr. Pelletier did not discharge Fred Sheenan because he took the action indicated. To urge Pelletier's ouster due to this item is to confess the desperate length to which these gentlemen are willing to go to gain their point. Not a suggestion in the record that even squints at improper motive, directly or indirectly, that touches Mr. Pelletier. Is it not clear to your Honors that Mr. Allen is driven hard for facts, when he will seize upon a circumstance of this character? Bear in mind that this case is plucked out of thousands, and is here urged as ground for ouster. Those of you on this Bench who in your younger years may have filled the office of District Attorney, harken back to your own experience and answer to your conscience if you could have escaped the harsh penalty of ouster if the facts in the Nee case are to be taken as demonstrating official malfeasance or misfeasance in office.

We pass to the Stone case. Your Honors will remember that this is a case brought under Paragraph 3:—"permitted assistant district attorneys to nol pross cases which should have been prosecuted." What are the facts? Mrs. Stone testified. Also a witness by the name of Officer Harvey testified. It was shown that an attorney by the name of Green represented the defendant. A divorce suit was pending. Some time in June the divorce was granted—at least, it was so represented to Sheenan. In other words, if you recall, a divorce had

been brought on the ground of adultery with the name of the woman in the case unknown. When the case came on to be tried at nisi it developed that the name of the woman was known. The tryer of the fact said, "You will have to amend your pleading and insert the name." Afterwards, the case came on, thirty or sixty days later, and was disposed of. In June, at the first trial, when everything was disposed of to all practical intents and purposes, the attorney representing the defendant came and discussed this matter with Mr. Sheehan, told him that the case was disposed of, and that the parties in interest had no further concern in the criminal prosecution.

This case would not be here but that Nathan Tufts' name appears in the papers—having no more to do with Joe Pelletier in the way of improper conduct than I had. Tufts had written a letter saying that before anything was done with this case he would like to be heard; he represented Mrs. Stone, Tufts wrote—and said that he would like to be heard before anything was done with the criminal case. There was no secrecy, no subterfuge about it. When the Attorney Green talked to Mr. Sheenan and Mr. Sheenan found Mr. Tufts' name in the papers, Mr. Sheenan wrote Mr. Tufts, or called him on the phone, and Tufts wrote a letter saying that he had no further interest in the case.

If your Honors please, there is no suggestion of sinister or immoral conduct on the part of Fred Sheenan in this matter. Of course, Mr. Pelletier had nothing whatever to do with the case, and the case, as I say, would not be here except that Nathan Tufts' name is found in these papers, because there are hundreds of cases which have been dismissed involving divorce suits wherein adultery had been charged. or something of that kind, and no question could be made of the propriety of nol prossing the case. But it is a different thing, if you can touch Joe Pelletier with the name of Nathan Tufts. Here again, I challenge attention to the labored effort to involve Pelletier with something that might indicate unworthiness. It is known of all men that Tufts has been found unworthy. If his name can be coupled with Pelletier, the circumstance may serve a desperate cause. Mark you, Pelletier had nothing to do with the matter one way or the other. It is a demonstration that Fred Sheenan did nothing improper. The magic word Tufts, in the opinion of these gentlemen, is sufficient to supply all links in evidence. Taint the air with a name and thereby destroy Pelletier! However, we are here in a Court of Justice not a school of scandal and suspicion. Facts must be presented before a man's good name can be besmirched. Mr. Allen cannot make out his case in a Court of Justice by the constant reiteration of the names—Tufts and Corcoran. These flaming names of scandal and reproach may serve to create suspicion in the shallow mind, but never will they suffice to bridge the gap in a Court of Justice.

The fourth and last case wherein deputies are concerned is the Mancovitz case. This happened, unfortunately, to be a brother of David Mancovitz, who was an assistant. Dave Mancovitz never had a thing to do with his brother's case in the district Attorney's office, and there can be no question about that, because there is no word of evidence in reference to it, and I say that it is one of God's

providences that we are here before a jury of lawyers who will not substitute suspicion for fact.

What are the facts about this case? The charge is that he, Pelletier, did not discharge Gallagher because of Gallagher's misconduct in the presentation of the Mancovitz case to the grand jury. Fortunately, testimony in the Mancovitz case before the Grand Jury was taken in shorthand and transcribed. Gallagher recommended that this man be indicted for the possession of stolen goods and not for breaking and entering. Now, I have read the testimony. I assume that the Attorney General has also read it. I do not know what his experience has been as a public prosecutor. I have had that experience. Some of you gentlemen may have had it. Any man who has had experience as a public prosecutor and who reads that record, will know why Gallagher did not indict this man for breaking and entering. It is a demonstration, and you have the evidence preserved for you, and I am not going to take time to analyze it, because, if Gallagher had done otherwise, if he had indicted this man for breaking and entering, Mr. Attorney General, there would have been left open a debatable fact, whereas having indicted him in eight counts, for which he could have been sent to the penitentiary for forty years, he indicted him on the only evidence which would have made it an absolute certainty that there was no escape for the man.

Now, it is said, by subtle innuendo that Gallagher stated to some of the Grand Jurors that this was Dave Mancovitz's brother. It developed in the trial of the case before the Grand Jury that Mancovitz's name was mentioned. Now, whether some juror said, "who is this Mancovitz"?—or whether Gallagher voluntarily made the offer or suggestion, I know not; but I say to your Honors that no bit of testimony in this case so demonstrates the strained effort to make innuendo furnish the link which is essential in this case than that evidence which was introduced out of the lips of Grand Jurors. "How did Gallagher present his evidence?" "He pounded the table and he spoke in a loud voice"—so the witness said. "Did he tell you that he was Dave Mancovitz's brother?" "Yes." All of which indicates so the hint is suggested that they were trying to favor this brother of Mancovitz; when, of course, if corruption was in the saddle, if deviltry was afoot, there was a practical way to do it, and that was not to present the case at all to the Grand Jury.

You read the evidence of the man Evans, to whom Mr. Gallagher spoke in a loud tone and was emphatic and get your own reaction. Every witness was subpoenaed that was asked for. One witness, Levine, was not subpoenaed. But was his name submitted to Gallagher? No. But Campbell, the complaining officer, said he told all that Levine could have testified to. Do you remember that testimony? Campbell stated, "I testified for thirteen pages. I covered every fact of my evidence, everything was developed that I had." And yet it is said that Gallagher, a lawyer untouched and unscathed in this good court excepting by inneundo and suspicion—was guilty of error, nevertheless we find that this lawyer presented every fact presented to him. The only other thing charged is that the case was not tried as quickly

as, in the judgment of these gentlemen, it should have been. He was indicted here March, 1920, and was afterwards indicted in New York March, 1921, and sent to the penitentiary from that State. But in the interim of time it is urged that there was time to have tried him here, and therefore Joe Pelletier must be ousted from office for not trying him. How many times the case was listed for trial, what the occasion was for the continuances, is not shown; but your Honors are to translate every presumption in favor of guilt. Fortunately, that is not the law.

It is said that this man Mancovitz, the brother of the accused, was destroying evidence. What happened? A man by the name of Evans went to Mancovitz one day. He had lost a Masonic charm, and he said to Mancovitz, "My wife feels badly about it, and I would like to get another one;" and Dave Mancovitz, because his brother was the guilty person, said, "I will give you $15 and you can go and buy another one." On another occasion he called up the officer at headquarters to give the man some of his property back. There is no question of the property going out of the community, or anything of that kind. There was nothing of that kind, no attempt to destroy evidence. A man by the name of Sobel wrote a letter to Mr. Pelletier—in February, 1921, about his property, and he says that within a few weeks after that he got a telephone call from Mr. Pelletier's office wherein Mr. Pelletier said, "You can go and get your property." That was after evidence came to Mr. Pelletier to the effect that the man had been sent to the penitentiary from New York; and one of the citizens here had property which was tied up which it was unnecessary to keep any longer. Those are the facts.

Those are the four cases—Nee, Soracco, Stone and Mancovitz—with which Pelleiter never had the slightest connection and concerning which there was never complaint made until this complaint here is filed as to the conduct of his deputies.

I now come to the Shute case, and I must not spend so much time on these cases. The temptation is to dwell too long, and I must be brief, because my voice is not so important in translating these cases as that of Senator Reed's, and I must hasten. I come to the Shute case. Do you remember the Shute case? That is the case where a man by the name of Shute was charged with having despoiled an old lady over there in Bangor, Maine.

We have to now translate ourselves back six or seven years to 1915, because out of the 80,000 cases that have passed through the office of this man since he has been in this position for over twelve years, they have been able to dig up out of all this vast multitude, twenty-one cases, and one of these is the Shute case 1915.

As I have said, it was a case involving a money transaction between a man who was buying and selling stocks, and an old lady who lived in Bangor. Now, what are the facts as they come to Mr. Pelletier? You are not here concerned in passing judgment upon Shute's guilt or innocence. You are concerned here with the question as to why did Pelletier take the action that he did, and was he actuated, as they claim, by improper motives?

Now, what are the facts? Patten, a lawyer who theretofore had lived in Maine, now practicing law in Boston. He came before Mr. Pelletier and said he wanted to present a certain matter to the Grand Jury. As soon as Mr. Pelletier discovered what it was, he said, "Why, that must be the matter that George Thompson, a lawyer practising law in Bangor, has talked to me about and said that he—Thompson—wanted to be heard if the matter was presented. Evidently Thompson had told Pelletier something about this being a matter wherein they might want to use his process for the collection of a debt. In any event, the evidence here discloses—and I beg your Honor to rivet your attention on this point—the evidence here discloses, from Patten's lips, that Mr. Pelletier said, "Are there any civil suits pending?" Why did he say that? Because George Thompson had doubtless talked to him about the case. Is there anything wrong about that? Oh, yes, sinister, bad. But, you are not going to say so without proof. Pelletier said, "Are there civil suits pending?" Now, what is the proof? Patten says to you on the witness stand, "I told him there was a small suit pending down here in Boston where I had attached some money." "I attached some money in the hands of some brokers, $400 or $500." And, on being pressed he says, "There may be a little suit in Maine of $500." Patten said they were inconsequential cases, and he so stated to Pelletier. Now, that is the testimony that it is admitted went before Pelletier. Now, get this point: George Thompson, Pelletier's friend, had come down here and said, "I want to be heard." And yet Patten, who was practically a stranger to Pelletier, secured an indictment because, although he told Pelletier there were certain civil suits pending, they were inconsequential and of no moment. Now, where do you find at the inception of this case, anything abnormal or unnatural in the conduct of Pelletier? Nothing. Now afterwards what develops? It develops that the litigation pending in Bangor involved not $500 but $25,000.00. Oh, it may be said, the equities involved in the properties covered by this litigation were inconsequential, but I am trying to visualize the situation from the standpoint of Pelletier. When he discovered that he had been deceived, that he had not been told the truth, and then when the attorney for the other side came to him, and made his statement, doubtless to the effect that it was an unfair thing for the prosecuting attorney's office to use his process in the manner that it was being used—to handicap litigants who had serious litigation in court, under these circumstances the case was nol prossed.

I say to your Honors this,—that when you come to study this case, you have to inject something based on suspicion and inneundo and not upon facts, because there is no basis of fact in this case of improper conduct and the worthy Attorney General knew that, and so he and his assistants discovered a mare's nest; they discovered the changed record. This is the case wherein the young man Kjellstrom testified and where the clerk has been unfortunately compelled to come on the witness stand twice to admit an error upon the part of one of his deputies. Remember, this is the case that was before the Joint Legislative Committee. It was stated that Pelletier said that the case was dismissed June 24th rather than November 24th and they went over and found

it was November 24th, and they came back afterwards and found it was changed to June. Who changed it? Did your office change it, Mr. Attorney General? If a change was made it is just as fair to assume that some enemy of Mr. Pelletier's manipulated the record, as it is to charge that Joe Pelletier did it. There is no evidence that even squints of his doing it. But, witnesses say that it was done. Ergo, Pelletier did it. If it was done, Mr. Allen, you know, as much about it as we do.

Why was that ever introduced in this case? A mistake was made, of course, by the clerk, who took the date for the certified copy from the back of the indictment. Why was this injected? Because it was conceived in the mind of Patten and translated to the realms of suspicion and innuendo, that an attempt had been made to borrow some money about November 24, 1916, and if the nol pross was made coincident with the borrowing of money up there in Maine, ah, then, Pelletier got money. Therefore, when it is claimed the date was changed back to June, it was to conceal his tracks. It now develops, however, that the money transaction occurred in November, 1915, and not in November, 1916, long before the matter ever came to Pelletier and the whole matter falls aborning. But, Mr. Allen must stick to the corruption of the records, although there is no rhyme or reason in the matter. Something was wrong, and Pelletier must have done it. A lot of smoke is raised about this case. When you come, however, to the naked facts there is nothing that remotely reflects misconduct. This statement is reduced to a demonstration in the light of Patten's testimony. Such was the verdict of the Joint Legislative Committee. Such has been the verdict of the good people of Suffolk County when Joe Pelletier's enemies urged this item on the stump—and your Honors, I confidently rest in the conviction that your verdict will be in harmony with the action of the legislature and the mass judgment of the people.

Now, we come to the Prendergast case. You recall that in 1916 a lady by the name of Bennett testified she was assaulted by a young man by the name of John Prendergast, and according to her story treated in an outrageous manner. Let us analyze just briefly this case, because it is from her lips that we must analyze the facts that will be translated into your minds for judgment. This witness says that if John Prendergast had come to her at any time within four weeks after the event and had apologized, she would have forgiven him, and the case would never have been filed. This witness, Miss Bennett, criticizes Joe Pelletier for doing that which after three or four years have passed, she was willing to do within ten days after the event. Look at the evidence! What does it disclose? Volume 7 is where the record in this case is found, and you will find in two places there where she said, "If he had come to me as a lady, I would not have pressed the case." This was when the event was hot upon her. This was when all the outrage was fresh in her mind. This is the case, mark you, that in February, 1917 went before the Joint Legislative Committee. Some time prior to that, Miss Bennett fell into the hands of this same young man, Kjellstrom who testified here about the docket entries, and he passed her on to Mr. Perrin, and from that time on to the present,

you find Miss Bennett as an avenging angel after Mr. Pelletier. She was in Mr. Pelletier's office in November of 1916. She said to him that she had been followed and pursued by Prendergast's brother. She said she was not so angry at the event as she was at what followed the event,—Prendergast's brother pursuing her all summer. Just why this strange story of pursuit is detailed by Miss Bennet is one of the inscrutable items of evidence in this case. The statement is so extraordinary that it of necessity arrests attention.

Let us analyze this fact, because you have to get Mr. Pelletier's position when this woman was before him, and why he took the action that he did. She said that John Prendergast's brother pursued her all one summer, that, like a shadow, every night throughout the summer months he followed her, annoyed her, pestered her, watched her. But, there was no complaint to any police officer. How did she know it was John Prendergast's brother? Now, this, I think, is important, because it tests the woman's attitude. She says, "Officer McDonald, my brother-in-law, told me that it was Prendergast's brother." Do you remember that? And yet, Officer McDonald, at page 870 of this record, says that he never knew that Prendergast had a brother. It is in volume 7, page 870, where McDonald testifies. She testified at page 842. Pelletier is to be criticised because he did not take stock in a story that your Honors on this record must discredit.

I say, if your Honors please, here is the testimony of this woman, erratic, not dependable. Now, what is the height of Pelletier's offending? What is the height of it? He said to this young woman, "Oh, be merciful to him; he never did anything wrong before; he doubtless was drunk; let him have a chance; he never did any wrong before; he has not done any wrong since; the case is pending over him. This is his first offense. Be merciful." Now, after three years and after waiting and studying this young man, Pelletier nol prossed that case, and he is charged with improper conduct, and the only improper conduct in God's world that you gentlemen will be able to find, when you search this record, was not money, not political influence, not favoritism, but, the promptings of a kindly heart to save this young man as a member of society. Ah, you say, that is not for him to decide. It is for him to press the law.

Will your Honors oust a man from office when his only sinning is on the side of kindness and reflects as pure and kindly an impulse as ever emanated from the human heart? Oust him for that? No, you will not. In my judgment, you will not. Criticise him, censure him, if you please, but when you oust Joe Pelletier for doing that thing you oust him not because of immoral or venal or arbitrary conduct, but because he was overly generous. If the man has a fault that is it.

Pausing upon this lady's testimony one word more, Miss Bennett stated, "Nobody ever said anything to me about this man Prendergast being a good man but Mr. Pelletier." Pelletier is the only one that ever said a good word for him. Yet she had to admit that Father McLeod had come to her and begged her to be merciful, that he was a good boy. She had to admit that Mr. Murphy, the commissioner, had been to her and begged of her to be merciful, that he was a good boy.

She went down to Martin Ryan's place and took issue with him because he had said in 1917 that she was being influenced by those people who had charge of the legislative committee and she went down there to upbraid him for it. You saw this witness on the witness stand. I am not saying anything about the witness that is unfair or unjust, but I am talking about Joe Pelletier's visualization of the witness and of her story, and of the strange story that she told of this man's brother following her. And, of course, it was not his brother,—if anybody followed her. She said, "I could even tell the color of his hair and that he had gray running through it," and he followed her in the night time.

Study the Prendergast case from all angles and nothing can be found that points to an unworthy purpose on the part of Pelletier. For three and a half years he held this charge over this young man. The young man had never been arrested before and during three and a half years went straight. He was of humble parentage. There is no money here; no political influence; no favoritism; no lawyer with a pull. Simply a first offender, who proved by his conduct that he was not a bad man. Joe Pelletier sought to save him from a prison record. Miss Bennett herself was willing to save him until she fell under the sinister influence that seeks to destroy this defendant.

I come now to a group of cases where we find Corcoran's name. I have spoken of one where Tuft's name appears, wherever there is a case that Corcoran or Tuft or Coakley's name appears, there is offense, that is in the mind poisoned by suspicion. I rejoice, although a stranger to this city, I rejoice that this man who is now my client has the great good fortune to be tried before a bench of lawyers, or a jury of lawyers, who have skilled understanding and will not translate the merest shadow of suspicion into facts. The case in which we are here concerned is back in 1916, and was filed against Mary Fuller. I wonder if the Attorney General then knew Mary Fuller as Brownie Kennedy? I wonder if Mr. Dodge did. I wonder if Mr. McCarthy did. No! But Joe Pelletier must have! Oh, yes, Pelletier must have. They say that Mary Fuller was Brownie Kennedy, and that is all there is to this case. What are the facts? Officer Campbell made an arrest of a woman and a man in a two-room apartment in 1916. Corcoran was her lawyer. He furnished the bond, or his office did. Concerning which Pelletier knew nothing. An officer went in and found a man in an undressed condition in this woman's apartment. They were seized, taken to the lower court, fined, appealed, the charge being keeping a house of ill fame. No evidence—and you remember the case, no evidence of bargaining, no evidence of circumstances that should be proved in cases of this character. And now Pelletier upon the facts as they came to him nol prossed that case. Any money? Any influence? Any favor? Nothing in God Almighty's name, gentlemen, but the simple fact that Corcoran's name is connected with it and the woman turns out afterwards to be the famous or the infamous Kennedy woman. Concerning which Pelletier had as much knowledge as any one of your Honors as far as this record goes, and your Honors are guided by that. That is your chart. And that disposes of the Mary Fuller case. This case would not be here at all if it were not that this scarlet name appears

in the record. This fact alone is offered to besmirch Pelletier. It is not proof.

Now, I come to these cases in which Mr. Coakley's name appears and the first is the Szathmary case,—no, the first one is the Tripp case, 1915. You remember this case. Mr. Tripp, a citizen of Boston. Mr. Stinson, the lawyer, appeared in the case for Tripp. Now, this is back in 1915. Coakley had made a complaint to Mr. Pelletier in reference to the conduct of a man by the name of Tripp, connecting him with a woman by the name of Bowser. It is said in the testimony of Tripp and Stinson that the matter involved adultery and fornication. When you come to study the record I think you will find that a tort was involved. Coakley had made a complaint to Pelletier—of course the fact that it was Coakley implies suspicion at once, but your Honors will not so decide—that a man by the name of Tripp was having some illegal relations with a girl by the name of Bowser. Mr. Pelletier sent for Tripp. I assume that there are at the Boston Bar a hundred lawyers —I don't know whether Mr. Dodge ever did it, I don't know whether Mr. McCarthy ever did it, but a hundred lawyers have talked with the prosecuting attorney and had him do exactly the thing that is here involved. He called this man in, and he talked to Tripp, and Tripp disclosed that he was a substantial man, that this really was a bad girl, and that she was trying to blackmail him, that she was trying to abuse Mr. Pelletier's office. What did Pelletier do? He said to Mr. Stinson that he would have nothing to do with the matter, but he said, "I advise you to go to Mr. Coakley and explain the matter." Oh, the fact that he said, "Go to Coakley" although he had told them that Coakley was the man that brought the case to him, that circumstance itself damns Pelletier. But why should it? Why should it? Where can you find the error and the misconduct? I beg your Honors' best thought, and I ask you when you go to your council chambers to think of this suggestion: You must take each of these cases and view them in their own perspective. There is no possibility of a common conspiracy. There is no possibility of that. Mr. Tripp and his lawyers went to Mr. Coakley's office, and there they discussed the matter with Coakley. The case before Pelletier was not further pressed. And then what follows? An action for tort was filed. When you calmly study the record all that appears is that Coakley complained to Pelletier of Tripp. Pelletier conferred with Tripp. After hearing Tripp's story he stated he would take no action. That's your story. If any lawyer's name in this court room was connected with the case but the name of Coakley the matter would not be here. Is it possible that a man's character can be touched, his reputation ruined, his whole life blighted by such methods? I beg of your Honors to remember that that is the first Coakley case that the record discloses.

The next is the Szathmary case, where we go back to 1920. The Szathmary case was a divorce case. That is found in volume 13. You remember the young Isreal Szathmary, not a very worthy figure, as I thought of him when he appeared on the witness stand. Judge Sullivan, a fine upstanding gentleman, as I viewed him, came and testified to your Honors in reference to this case. The case is still pending.

Now, what follows? In November of 1919 or 1920, as the case may be, Mr. Sullivan—Judge Sullivan—went to see Mr. Pelletier and there complained because the case was not being prosecuted. He said to Mr. Pelletier—and I think this significant, if you will read Judge Sullivan's testimony, and of course you will—"I was not satisfied because this man had not paid this woman sufficient money and was not paying her sufficient money, and the case ought to go forward." Then Pelletier turned to the wife of this young man and said, "Mrs. Szathmary, what do you want us to do with this case?" And she said, "Please do not prosecute it. Leave it as it is. We are living together, and I will not get my support if he is taken away." That is the record of the case. Now, where does Coakley figure in the case? Young Fardy, the attorney for these people, had said that he had gone to Mr. Coakley and said, "If this case is going to be tried I want you to help me try it. Judge Sullivan is on the other side, and I do not feel myself capable of competing with him, and I want your assistance. What will be your fee, Mr. Coakley?" Fardy said Coakley stated, "Whatever you figure that my services are worth, or your clients can afford to pay. It is all right with me. You can fix that up yourself."

That is the testimony. He want back to his client and charged him a fee of $2000, $1000 of which he said he would give to Mr. Coakley if he ever had to call on him. And here is the paradoxical situation we find: the only opportunity Coakley could have to get money was to have the case tried, and Pelletier was the man that continued the case and did not put the case to trial! Strange conspiracy! Extraordinary betrayal of public trust! Pelletier is damned when Coakley makes a fee. Also he must suffer when he keeps Coakley from making a fee. However, what do these gentlemen care for logic. Put Coakley in the picture and every gap is filled. All presumptions disposed of!

The Charlotte Broad case, is a case if your Honors please, in 1916, wherein this young woman who was then in New York and a man by the name of Waxman, a citizen of this town, had had prior relations. After breaking off his relations with the Broad woman he married and was living happily and contentedly. This girl was pursuing him. Now Coakley came to Pelletier's office and made a complaint that the woman was trying to blackmail Waxman. And wasn't she? Can there be any doubt about it? Can there be any question about it? Mr. Pelletier wrote her a letter. This is the case where this lawyer Stebbins appeared. The letter from Pelletier to the Broad woman in New York shows what took place. Stebbins went to New York and wrote the answer to the letter for her wherein he said for her, that if Mr. Pelletier would indicate to her wherein she had done wrong in trying to get this money from Waxman, she would be glad to talk with him. Shortly after that she wrote Pelletier another letter wherein she acknowledged that this man had never promised to marry her; that she was trying to get money out of him on account of the letters he wrote her, admitting the blackmail plan; that as far as she was concerned she would abandon it. Now that is all the contact that Pelletier had with this case. If it were not that Coakley's name was connected with it, wherein would anybody suspicion error?

There remains but one case to which I desire to call to your Honor's attention. That is the Piscopo case in 1917. Mr. Pelletier, McIsaac and Webber were partners in a civil law business, coincident with the time that Mr. Pelletier was conducting the office of District Attorney. Mr. Piscopo was then a citizen of Boston, who had lived here and reared a family of six children whom he abandoned in 1911. From that time on litigation developed between Piscopo and his wife, she fighting for herself and her children. He was evidently a man of large means. Some time in 1915, or 1913 rather, proceedings were filed here in the Probate Court by the wife for separate maintenance. Along in that period Mr. Piscopo who knew McIsaac, and because Mr. McIsaac had done business for him, met McIsaac on the street and they had some talk about Piscopo's affairs, and Piscopo employed McIsaac to go forward and help him look after his matters. McIsaac took charge of the matter in the Probate Court and defeated the wife's claim there. Divorce libels were filed up in New Hampshire—if I am possibly mistaken about where the divorce was granted I want it corrected, but in any event a divorce was finally granted in another jurisdiction. Coincident with the divorce being granted alimony settlements were adjusted, four hundred thousand dollars passing, two hundred thousand dollars to the wife, and two hundred thousand dollars in trust for the children. McIsaac conducted these negotiations, and finally the matter is settled, long prior to February 7, 1917. Two weeks or two months—the evidence is not clear because the deposition says in one place several months, and in another place several weeks—the man was in McIsaac's office discussing about his fee. At that time he says Mr. Pelletier was there. He says that McIsaac said he would charge him $35,000. When he objected to the amount—Pelletier, he says, suggested that he was running a hotel here and they might have the hotel watched. That is the sum total of this charge of the attempt on the part of Pelletier to use his office to extort money in civil proceedings. Now what follows? Here we must analyze and pass judgment—your Honors will have to pass judgment upon the testimony of this man and as to its believable nature. Piscopo, says the threat was made some weeks prior to February 3 or 7, and upon that date this man went to McIsaac's office and paid him $5,000. No suggestion at that time to McIsaac: "This money is paid now and I hope you will let my hotel alone." No suggestion of going to his waiters down there and telling them he was afraid of young boys and girls coming in and his license taken away from him. No evidence of warning his help touching the question of watching against a job being put up on him. No suggestions of reporting to the licensing board, or to the police, or anything of that kind. No statement to his private counsel in the other jurisdiction. No statement anywhere, or any place of this question of his fear and fright over Pelletier's threat. In February he paid $5,000. In May he comes in and pays $14,000 in cash and $2,000 in a note, making a total fee of $21,000. I submit your Honors in view of the amount of business involved, and in view of the responsibility of going over these trust papers, I say to your Honors in my judgment as a lawyer the fee involved was not exorbitant, as none of these gentle-

men would assert. And coincident with the reasonableness of the fee and the conduct of this man who says he never opened his mouth to a living human being all this time about this threat, while this matter was before the Bar Association and when this matter was before the legislature committee, and when it was in the campaigns, and in no place does he say anything excepting two months before the time his deposition was taken in 1921. On the utterly baseless story — a story that would not support proof of a promise to pay—you are asked to destroy all that this man hold sacred—his good name—his fair reputation.

Joe Pelletier may have had faithless friends—that is, assumed friends—men who sold him time and again behind his back. Why, sirs, up in Washington there are types of men who make a business of holding themselves out as "fixers" of people within the various Departments of Government. The last man to learn of this vile practice is the man most concerned—the man who is being mistreated. It is possible that there are lawyers in Boston so lost to all sense of honor that they have traded upon Joe Pelletier's name. However, as to this I challenge your attention to the basic fact that there is no evidence in this record that connects Pelletier with any such lawyer. I hold no brief for Dan Coakley. If he has abused Joe Pelletier's friendship then indeed, he is a vile wretch. However, whatever the fact may be as to what Dan Coakley may have done there is no evidence in this record that connects Pelletier with Coakley, and this directly or indirectly.

Your Honors, that is as far as my review will go of this record. Senator Reed will take up the balance of these cases. In closing may I just be permitted to say this one word: I feel it has been a great privilege as a lawyer—one who has led a very active and full life as a lawyer—to have had the privilege and opportunity of coming before this great Court. We have been treated with rare courtesy and kindness. This is an important case—many angles are involved—many things that go deep into the soul of our human nature. I have an abiding confidence in the integrity of this great profession of ours. I have an abiding confidence in the fine spirit of this Court. No matter what suspicions may have been created by the testimony; no matter what false atmosphere may have been engendered by malice and envy; I have an abiding confidence in the fact that this great Court will be guided solely by the facts of the record and not by the innuendo of counsel, and when this Court finds the facts as I have sought to show them in the ten cases that I have reviewed, and as Senator Reed will show in the cases that he is to review, an utter lack of that kind of probative evidence that is essential in a court of justice, I say, when you find as I believe you will, an utter lack of evidence, I know that the traditions of this great court will be followed. It is a court revered by lawyers throughout this country. I am grateful for having had the opportunity of being before it.

MR. REED: I was out when the court made its announcement as to time. If I had been here I would have asked General Boyle to

have taken up the time until recess. If I began now there will be a recess at eleven o'clock.

RUGG, C. J.; Quarter past eleven, Mr. Reed.

MR. REED: Then I will talk a while and there will be an adjournment for dinner, and cut my remarks in two twice. I was just wondering if I might further impose on the good nature of the court and if we could have our recess a little bit early now and then I could proceed until one o'clock.

RUGG, C. J.: Very well. We shall be very glad to do that.

RUGG, C. J.: Mr. Reed.

CLOSING ARGUMENT BY MR. REED

MR. REED: If your Honors please, I am about to perform my last duty in this case. Lest I forget to do so later on, I now thank the Court for most courteous treatment, for some rather unusual courtesies extended to me, I am sure because I am a stranger in this part of the world and unfamiliar with the practice of Massachusetts.

For the closing of the case without putting on even a word of evidence, my associate, General Boyle, and myself take the full responsibility. We acted upon our judgment that no case had been made, and that, under the rules of law and under a fair construction of the evidence, we could safely repose the judgment of this case in this great tribunal without dignifying the prosecution by evidence in rebuttal.

If I had been trying this case before a jury without a judge to guide the jury in the law, a different conclusion would have been reached; but in this tribunal, where the Judges know the law, where their long experience enables them to analyze evidence and to determine its weight, I approach the case with the utmost confidence that, at its end, upon the evidence adduced by the State, there can be but one result, and that the dismissal of these charges.

In preliminary, let me state to your Honors what I conceive to be the law of the case. It is, first, that each of these charges must stand by itself; that one cannot be brought in aid of the other; that there must be a separate determination of each charge; and that you cannot take the sum total of twenty-one failures and add them together to make a general case. You cannot accumulate enough zeros in a lifetime to make an integer. Every case that has been cited to your Honors during this long trial on matters arising during its progress has, without exception, indicated that the character of this case, whether it be civil in form or otherwise, is nevertheless criminal in its nature and must be determined by fixed rules of law, among which are that the charge must be laid, and the charge must be proven as laid. This is not, as the Court has already said, an inquisition. This Court does not, in my judgment, sit as a board of censors. It sits here to determine whether, under the law, upon the specific charge made, a case has been made out, and whether that case is sufficient to warrant a removal from office.

In this latter conclusion I am supported, I think, by the whole general line of authorities, but I desire to call attention particularly to one case,—*Andrews* v. *King*, 77 Maine, 235. I quote:

> "In special courts established for the trial of officers alleged to be unfaithful, such as courts of impeachment and courts martial, we believe it is the universal practice for the court to pass first upon the truth or falsity of each charge before passing sentence. This must be the course, otherwise the court might pronounce sentence where no one charge was believed by a majority of the court. There might be as many charges as there were members of the court and no one charge received the assent of more than one member, yet that member vote to sentence on account of his belief in the truth of that one charge which all his associates believed to be false. If each member did so there would be sentence without conviction and without guilt. Such a result would be monstrous, hence the practice of first ascertaining and declaring whether the court agrees or concurs upon any one charge as proved. We think it may be assumed, in the absence of specific directions, that the Legislature intended that a special tribunal should follow the course so long and generally followed by the common law courts and special courts with similar duties. The same reasons for such a course certainly exist."

If that authority be not convincing, and if that reasoning be not conclusive, nothing I can say would add to it, and I pass from that phase of the argument.

The second rule to which I desire to call attention, to which I shall have occasion to refer in the course of my remarks later on and which furnishes, in my humble judgment, the yardstick by which is to be measured the greater part of the evidence in this case, is the doctrine of circumstantial evidence. If the law be as I contend, then there is an utter failure to make out a case. I shall take some of my limited time to read the wisdom of the court, which will be superior to anything I may utter. First, I call attention to *Commonwealth* v. *Webster*, 5 Cush., the opinion written by the great Chief Justice Shaw, whose learning I need not eulogize and upon whose greatness I need pass no encomiums. Speaking of circumstantial evidence he said:

> "The first is, that the several circumstances upon which the conclusion depends must be fully established by proof. They are facts from which the main fact is to be inferred; and they are to be proved by competent evidence and by the same weight and force of evidence, as if each one were itself the main fact in issue.
>
> Under this rule, every circumstance relied upon as material is to be brought to the test of strict proof;"—

I interrupt to say that, as I go on, I shall demonstrate that the majority of this evidence rests upon imagination and conjecture, the connecting link being supplied out of inflamed imagination. I quote further:

> "The next rule to which I ask attention is, that all the facts proved must be consistent with each other, and with the main fact sought to be proved. . . . Therefore, if any one fact necessary to the conc usion is wholly inconsistent with the hypothesis of the guilt of the accused, it breaks the chain of circumstantial evidence upon which the inference depends; and, however plausible or apparently conclusive the other circumstances may be, the charge must fail. . . . Another rule is, that the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty, that the accused, and no one else, committed the offence charged.
>
> "It is not sufficient that they create a probability, though a strong one, and if, therefore, assuming all the facts to be true which the evidence tends to establish, they may yet be accounted for upon any hypothesis which does not include the guilt of the accused, the proof fails. It is essential, therefore, that the circumstances taken as a whole, and giving them their reasonable and just weight and no more, should, to a moral certainty, exclude every other hypothesis."

Apply that to the bank account evidence.

I quote from *Commonwealth* vs. *Jeffries*, 7th Allen, 548: [Reading]

> "To render evidence of collateral facts competent, there must be some natural, necessary or logical connection between them and the inference or result which they are designed to establish."

In *Barrett* vs. *Bruffee*,, 182 Mass., page 230, citing *Commonwealth* vs. *Jeffries*, the same rule of logical inference has been applied to civil cases: [Reading]

> "The question in this class of cases is whether the collateral fact sought to be proved is so closely connected with the question at issue that an inference may fairly be drawn from the collateral fact of the conclusion sought to be established."

In *Lydon* vs. *Edison Electric Illuminating Company*, 209 Mass., 532, it was held: [Reading]

> "The fact that he exercised care in going down as it is shown that he did by the fact that he had got safely by the wire, and by the fact that the spur on his right foot was driven into the limb, does not remove the manner in which the accident occurred from the field of conjecture or warrant an inference that at the instant of the accident he was in the exercise of due care."

In *Brennan* vs. *Keene*, 237, Mass., 556: [Reading]

"In the field of pure speculation one conjecture may be as near the truth as any other."

Apply that to the bank deposit evidence.

I hope my manner will not be offensive to your Honors. It is simply a part of me, and I need not again express my great respect for the court. My apparent dogmatism of manner is inseparable from my nature. And yet, like many other bits of circumstantial evidence the conclusion to be drawn is very unsound.

I could file long briefs upon this question, but I am content.

I now pass to another doctrine which I assert lies at the very foundation of the law, and if it be applied in this case, then there must be a holding that all that the District Attorney did in these cases was within his sound discretion, and that the exercise of his discretion cannot be inquired into. Unless it can be clearly proven that he did not act within his discretion, but that he went outside of it for some evil purpose, then no case exists. I quote from *Commonwealth* vs. *Wheeler*, 2d Mass., 172: [Reading]

"I observe in the bar, the nolle prosequi is alleged to have been entered by the advice of the Court of Common Pleas. Certainly, the court is not legally competent to give any advice on this subject. The power of entering a nolle prosequi is to be exercised at the discretion of the attorney who prosecutes for the government, and for its exercise he alone is responsible."

I quote very briefly from *Commonwealth* vs. *Tuck*, 20 Pickering: [Reading]

"It is perfectly clear that a nolle prosequi may be entered at the pleasure of the prosecuting officer. Such is the constant practice. It may be that the indictment is defective and he may wish to procure another. He may discover that the evidence will turn out different from what he expected and he may wish to vary the charge to make it conform to the proof. Or he may have good reasons for not wishing to prosecute at all. There may be innumerable causes for discontinuing the prosecution; of all of which he must judge, upon his official responsibility. In many cases the discontinuance may operate to the prejudice of the defendant, but never to the injury of his legal rights. It is not to be presumed that this officer will violate his duty or act oppressively." . . .

"The power to enter a nolle prosequi is held by the Attorney General virtute officii. He exerts it upon his official responsibility. The court has no right to interfere with its exercise. They can only judge of the effect of the act when done, and of the legal con-

sequences which may follow from it. They will take care that it shall not operate to the prejudice of the defendant's rights."

In *Commonwealth* vs. *Smith*, 98 Mass., page 10: [Reading]

"It is perfectly clear that a nolle prosequi may be entered at the pleasure of the prosecuting officer before a jury is impanelled. The reasons for the practice are there stated, and they are numerous and decisive."—

That is referring to *Commonwealth* vs. *Tuck*, 20 Pickering.

"Nor can we see that there are any valid objections to it. Such a mode of disposing of an indictment can in no way impair or affect the rights of the accused party in any future prosecution for the same offense. That it will not be resorted to capriciously or oppressively, so as to work any undue hardship on defendants, is sufficiently guarded against by intrusting the exercise of the power to the sound discretion of an officer of the government, whose function it is to watch over and direct the course of criminal prosecutions, and who can have no motive to use the authority vested in him in a manner inconsistent with a due regard to the rights and interests of all parties."

Again, in *Lizotte* vs. *Dloska*, 200 Mass., 327: [Reading]

"The District Attorney had the absolute power to enter a nolle prosequi upon his official responsibility, without the approval or intervention of the court. He alone is answerable for the exercise of his discretion in this respect. It is presumed that he will act under such a heavy sense of obligation for enforcement of the law and sensitive consciousness of important public duty that no wrongful act will be committed."

To the same effect see *Commonwealth* vs. *Wheeler*, 2 Mass. 172, and *Commonwealth* vs. *Tuck*, 20 Pickering, 356. But, let me read a little further from that case, because it seems to touch another phase of this proposition: [Reading]

"Entry of a nolle prosequi is final so far as the particular case is concerned. It does not require the presence nor the consent of the defendant."

We had a great deal of evidence introduced here that defendants had not been consulted.

"Therefore, the agreement of the prosecuting officer, that the indictments or complaints should not be further prosecuted and that an entry upon the records of the court should be made to that effect at an early sitting, was tantamount to the completion of the service which the plaintiff contracted to render in defending Farra

and Goyeski in the criminal proceedings pending against them. It is not to be assumed that the word of a prosecuting officer will be broken respecting the disposition of cases, in instances where the whole matter lies in his own hand."

It seems there have been other prosecuting attorneys who have said to attorneys having cases before them, that they would dismiss the case.

In *State* vs. *Smith*, 49 New Hampshire, 155, going outside of this state: [Reading]

"No question is made by the counsel on either side, as to the general discretionary power of the prosecuting officer, in this state to enter a nolle prosequi in ordinary indictments, instituted in the name of the State. This power, such officer, exercises virtute officii, frequently before a jury is impanelled, and sometimes, while the case is on trial, before the jury, with the consent of the respondent, and sometimes, after a verdict is rendered against the prisoner.

It may be that the prosecuting officer, finds his indictment defective in form, or substance, and, that he may wish to procure a better one, or, he may discover, that the evidence will not sustain the charge as alleged, and a change may be requisite to conform to the actual proof. There may be various reasons for discontinuing the prosecution, all of which he must determine, being controlled by well settled principles of law and practice and a sound legal discretion. It is not to be presumed that this officer will voluntarily consent to any discontinuance which will materially injure the rights of the prisoner, or that he will violate knowingly his official trust or in any way, act corruptly or oppressively."

Again in 56 New Hampshire, 137, *State* vs. *Tufts:* [Reading]

"For obvious reasons the functions of the court and prosecuting officer are entirely distinct. The court cannot usurp the duties of his office and say what cases shall and shall not be prosecuted. The law has lodged that duty with officers selected for that special purpose, and who are responsible for the manner in which they perform those duties. . . . He is not required to prosecute an indictment if there is no proof to sustain it, or so little evidence that the chance of convicting is not such as to justify the attempt. Nor is he required to prosecute cases where 'they are pursued in a spirit that renders them injurious to the public morals.'"

I call special attention to that clause, because it shows that this discretion of the District Attorney extends so far that when he concludes it is better for the public morals, better for the public welfare not to prosecute a case, in the exercise of his discretion, he may refuse to proceed with the case.

I read from 30 Federal Reporter, page 21, *In re* Eaves:

"It is all important to good government, and the public interests, that an officer who exercises important judicial functions should be free in thought and independent in judgment, when he acts in the administration of justice and the enforcement of the law. The course of justice would be impeded, and the efficiency of the commissioner would be greatly impaired, if his freedom of action was restrained by continual apprehensions of removal from office on account of honest official mistakes and errors of judgment, or by judicial caprice or by the clamor of individuals excited by personal prejudices and hostility.

"In this civil proceeding which so seriously affects the reputation and other interest of the respondent he is entitled to all the presumptions of law as to innocence which are allowed on criminal trials."

State vs. *Hastings*, 37 Nebraska:

"As to whether an impeachment is to be regarded as a civil action or as a criminal prosecution for the purpose of the production and the quantum of proof to warrant a conviction it may be safely asserted that the decided weight of authority in this country and England, *if indeed there exists a diversity of opinion* on the subject, is that impeachment in that respect must be classed as a criminal prosecution in which the state is required to establish elements of the charge beyond a reasonable doubt."

In the Impeachment of President Johnson it was declared:

"To say that a high public officer with good motives and with an honest intent to obey though he mistake the meaning of the statute can be found guilty of a high crime or misdemeanor which shall subject him to the heaviest punishment which can fall upon a public man in high office is to assert a doctrine never before heard in any court of justice."

In *Maben* vs. *Rosser*, 24 Okla. 588 and again in *Phillips* vs. *State*, 181 Pac. 713, this doctrine is laid down:

"In a case to remove an officer the jury must believe from the evidence in the case beyond a reasonable doubt that the officer is guilty of the charge. The degree of proof required is the same as required in the trial of a misdemeanor."

State vs. *Bush*, 208 S. W. 609:

"Proceedings under the ouster should never be brought unless there is a clear case of official dereliction. This is a very drastic statute and should not be invoked except in plain cases that could

be certainly proved. There is no excuse for instituting an ouster suit for purposes of inquisition and as a fishing expedition."

Storey on the Constitution, s. 798, after quoting from decisions:

"The foregoing decision also held that ouster proceedings were civil. Nevertheless, it indicated that the degree of proof should be to a high degree of certainty, greater than that which ordinarily prevails in civil proceedings.

"It is the boast of English jurisprudence and without it the power of impeachment would be an intolerable grievance; that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts.

"The same rules of evidence, the same legal notions of crimes and punishments prevail."

Andrews vs. *King*, 77 Me:

"The proceeding is adversary or judicial in its character, and where the statute is silent, the substantial principles of the common law must be observed. . . .

"The removal cannot be made, unless the alleged cause in fact exists, and such existence should be ascertained and declared, as the legal basis for the sentence of removal. Such is the immemorial practice in prosecutions in the common law courts."

Com. vs. *Kane*, 108 Mass. 423. *Masonic Trust* vs. *Boston*, 201 Mass. at 326:

"The foundation of the rule of evidence that a person acting as a public officer has been duly appointed to the office which he assumes to exercise, is that all acts done by what appears to be public authority are presumed to be rightly done unless the contrary is proved."

"All acts done . . . are presumed to be rightly done unless the contrary is proved."

Bank of the U. S. vs. *Dandridge*, 12 Wheat. 64, 69:

"The law itself for the purpose of strengthening the infirmity of evidence, and upholding transactions intimately connected with the public peace, and the security of private property, indulges its own presumptions. It presumes that every man, in his private and official character, does his duty, until the contrary is proved."

There is one further proposition of law to which I call attention. It is the law of conspiracy. I shall not pause to more than state the point. Conspiracy consists in the meeting of two or more minds to do an unlawful act or to do a lawful act by unlawful means. There must be a meeting of minds as to the common purpose, a guilty knowl-

edge. It is true that, a conspiracy being established, the meeting of the minds in the common cause having been shown, it is not then necessary that each individual member of the conspiracy shall be acquainted with each of the acts of the fellow conspirators, because the conspiracy having been shown from that center flows out the responsibility for the individual acts of the several conspirators. But there can be no conspiracy inferred from individual acts unless the conspiracy has been shown, although of course it is true that the individual acts may in themselves constitute such a chain of circumstances as to prove the conspiracy; but there must be evidence, direct or circumstantial, to establish the common meeting of the minds to accomplish a common purpose. All these principles of law, I take it, your Honors have long been familiar with, yet in this vast field of legal learning it is always necessary to take our bearings when we come to consider any particular journey we are to undertake.

And now, if your Honors please, I desire, if I can, to lay before the Court very briefly a picture of this case. My associate, Mr. Boyle, has well said that if your Honors are to hear this evidence and weigh it, as you must, it is almost necessary that you transport yourselves in your mind from this bench to the District Attorney's office. I presume there are but few men, who have not themselves filled a position of that kind, can appreciate its difficulties. Your office crowded in the morning with complainants, many of them set on by improper motives, many of them mistaken, some of them desiring to use the office for some sinister purpose, some of them seeking revenge, some of them seeking to use the office for the collection of money; all of them come presenting their cases and holding back the real reason. The Court in the meantime is busy trying cases, and your attention is divided there. You have but a few minutes to examine each case in the ordinary course of business. In a city like this, with the vast ebb and flow of business through the prosecuting attorney's office the personal attention of the District Attorney is a physical impossibility.

Mr. Pelletier has been continuously in office since 1909. He has disposed of over 80,000 cases of record, and probably three times that number which never passed beyond preliminary inquiry. The State asserts that he was guilty of misconduct in 20 instances out of the 80,000. The earliest charge is 1915; the latest charge, with the exception of five cases trivial in their character and solely in charge of deputies, in 1918. These cases handled by the deputies were the Stone, Mancovitz, Soracco, Nee and Szathmary cases. In addition to this there is the charge about political speech. Apparently neither industry nor malice was able to discover the slightest defect in Mr. Pelletier's conduct during the first six years of his official career or, with the inconsequential exceptions named, during the last three years thereof The picture presented by the prosecution is therefore of a man uncorruptible, efficient, honest for six years, suddenly becoming and remaining for three years a bad, wicked and vicious man, and then just as suddenly, and without apparent reason, returning to his original state of virtue. This notwithstanding the fact that Corcoran's activities

seemingly have reached their climax during the last three years and that the much abused Coakley was all the time at large.

The Attorney General brought charges upon thirty-two separate and distinct cases. Many of these cases embraced four or five separate and distinct charges. In each instance he declared upon oath that the matter charged was an act of wilful malfeasance, misfeasance or non-feasance in office. In five cases, the Emerson Motors, the Daniels, the Metropolitan Motors, the Albert T. Smith and the Emery, he asserts that Pelletier brought or threatened to bring criminal proccedings and in the alternative

(1) that he proceeded without sufficient evidence, or

(2) that having sufficient evidence he failed to prosecute.

The Attorney General further charges in paragraph 30 that Pelletier, having sufficient evidence to prosecute, has failed to do so; in paragraph 33 that Pelletier has nol prossed cases which should have been prosecuted; in paragraph 32, that having sufficient information he has failed to prosecute cases. Many of the cases specified are brought under two or three of these alternative or contradictory charges. In substance the charges are that Pelletier started an investigation, or prosecution, and that not having carried the prosecution through to a final judgment, it followed that

(a) he had begun an investigation or prosecution without sufficient evidence, and is therefore guilty, or in the alternative

(b) that he had sufficient evidence and failed to prosecute, and is therefore guilty.

Tested by this philosophy, how stands the learned Attorney General? He, within ninety days brought under oath in the most solemn form charges in 32 specific cases. He has dismissed 11 of these charges, more than one third of the total. He has offered excuses for the dismissal of but two—the Cobb and Smith case. His excuse in one instance being the sickness of a single witness; and in the other the refusal of the alleged injured party to testify under oath. If, therefore, we apply to the Attorney General the rule he seeks to apply to Pelletier, it follows that the Attorney General either brought at least nine complaints without sufficient evidence, or, having sufficient evidence, failed to prosecute, and he is therefore in nine instances tarred with the same stick with which he would besmear Pelletier for acts selected from 80,000 cases disposed of during a period of twelve years. Do I charge him with bad faith? No. But I use his act to illustrate the defects of his philosophy in this solemn proceeding before this great court. Nine separate times he has done acts of exactly the same character which he alleges against Pelletier as a reason for his removal. Moreover, in the instance of Pelletier, he had in some cases proceeded no further than a preliminary investigation, a thing absolutely necessary if a District Attorney is to gain any information whatever. In the other cases, indictments were returned by grand

juries who often act improvidently. In this case the Attorney General himself made charges and solemnly swore to their truth. The Attorney General seeks to draw from the mere fact of the initiation and prosecution and its subsequent abandonment an inference of a guilty motive. Shall we apply that doctrine to the Attorney General, or to his initiation and dismissal of the 11 cases referred to. To do so would be monstrous, but to apply it to Pelletier would be more monstrous, for the act of the Attorney General occurred in one case. The dismissals were within 90 days after bringing the charge, while the act of Pelletier extended over 7 or 8 years of time and concerned cases selected from 80,000 cases and involves all cases of accidents which occur in the ordinary course of justice in handling the vast flood of business flowing through the criminal courts of the land.

Of the 80,000 cases pending before Pelletier less than 5,000 were actually tried before juries, or by any possibility could have been so tried. There are approximately 200 trial days in the year. The disposition of 400 or 500 cases by trial crowds a court to the limit. The inevitable result is that the greater number of cases must be disposed of by pleas of guilty, by filing, and by nol pros. Out of the 80,000 cases heard during the seven years, and which embrace all the charges against Pelletier, it is alleged he wrongfully or mistakenly dismissed, or failed to prosecute in some thirteen or fourteen instances. Let me call attention, although the court will take judicial notice of these records, that there was pending—I will call attention to but one year, but I should be glad to leave as a part of my argument this tabulation, there were pending at the beginning of 1921, 1548 cases. That has some tendency to keep a man busy. 7,711 cases were begun in the year 1921. 592 cases were actually tried. 1,724 cases were nol prossed. 439 cases were filed before trial. There were pleas of guilty in 3,135 cases. 1,678 cases were placed on file after the cases were disposed of. There were 789 cases admitted to probation. I am quoting these figures on the assumption that the court will take judicial notice of the court records themselves. But if they are not in evidence, and if they cannot properly be presented here, then I simply call your Honors' attention to these figures as illustrative of the business of the District Attorney's office.

The disposition of practically 9,000 cases in a single year makes it impossible for the District Attorney either to be personally familiar with all these cases or to give to any of them, except the most important, any prolonged personal consideration.

The only charges brought since December, 1918 are, the Mancovitz case, still pending, the defendant being in prison in New York; the Szathmary case, still pending at the solicitation of the injured wife, the husband in the meantime furnishing the wife and children with support; Stone and Nee, handled exclusively by Mr. Sheenan; and the Soracco case in charge exclusively of Mr. Mancovitz. In addition to these there is the political speech of which more hereafter. The youngest case, which is over three years old, and the earliest case which is over seven years during this period of three and one half years stretching from July, 1915 to December, 1918, complaint is made as to fourteen cases,

four of them seven years old; six of them six years old; two of them five years old; two of them three years old.

Since the date of these twelve charges Pelletier has been elected twice. He has been elected once since the date of the last four charges I am discussing. All the graver charges have been thrashed out on the hustings. Many of these charges I do not know. The record does not disclose them. But it does disclose there was an investigation by a legislative committee in the 1917 session. Substantially all of these charges were made before the Bar Association nearly three years ago. They were practically abandoned. They were conducted by Pelletier's enemy, who was afterwards convicted of receiving stolen papers from Coakley's office, and whose case rests in this court. They were finally, by some mysterious influence, suddenly revived to form the basis of the Attorney General's information. The record furnishes indubitable proof of the activities of Mr. Cabot, who originally preferred these charges before the Bar Association, after a first attempt to bring them before this court who declined to issue an order of notice. Although not a lawyer he sat at the Bar Association hearings as I recall the evidence. He employed attorney Coleman to procure an affidavit from Bond the stock salesman for Metropolitan Motors, and it is this same Coleman who supervised the affidavit, or at least carried the affidavit of Matches to the Bar Association, and accompanied Matches to Boston while Matches gave his testimony before the Bar Association. He is today the representative of Matches in his criminal proceedings.

It may be frankly confessed that it is not fully and conclusively proven that Godfrey Cabot is the real instigator of these charges, but the evidence as to his participation therein is a million times more direct and a million times stronger than any evidence produced against Pelletier. These ancient cases are dragged forth from the catacombs of the past. Many witnesses have disappeared, papers and documents are lost, and memory of the occurrences largely obliterated from the minds of honest men and only preserved and kept fresh and growing in the brains of witnesses controlled by selfish and sinister motives.

Such, sirs, is the groundwork upon which the structure of this case rests.

And by what kind of witnesses is it sustained? In thirty-six years of practice I have never seen such an array. Let me call the roll. I will not call it the rogues' gallery, although it would not be a misnomer.

The convict Matches—admittedly testifying to mitigate or escape punishment for his crimes.

Perry—the lawyer, whose association with automobile thieves, it is alleged, was so intimate that Pelletier should be removed from office for not sending him to the penitentiary. Perry—now resting under indictment and disbarment proceedings, the while in the tender care of the Attorney General.

Emery—who debauched and stole his friend's wife, wasted his mother-in-law's fortune, possesses two or three habitats, engaged in numerous questionable ventures, and who is now, by the undisputed evidence, resting under charges made to the Attorney General.

Peters—of whom it is said Pelletier should be removed from office for failure to prosecute; Peters, who attempted rape upon the wife of his friend, who stood swaggering in the witness box and sneeringly said that the husband would not dare to strike him.

Dorothy Coté—who lured a husband from his wife and children, who brought him to verge of bankruptcy, who despoiled him of his fortune, and, in her insatiate greed, took the ring from his mother's finger, who threatened him with exposure and in the process brought suit to compel him to further disgorge his property.

McCallum—the lawyer who lent himself to Miss Coté's plan, yielded to her blandishments so that he became a social visitor at her flat and an associate of her female companions; who forgot his obligations as a lawyer and disclosed the confidences of his client; who, at her suggestion and because of her siren influence, sent a copy of the letter of demand on the Locomobile Company to Lawrence, who was to be the victim of the concerted blackmail. No court analyzing the evidence, it seems to me, could escape the conclusion that the letter was sent to Lawrence for but one purpose, and that, to use the language of the street, to compel him to "come across."

Garland—McCallum's chaperone at the Coté flat but who came forth so unscathed that he now appears at once as the accuser of the District Attorney and as the counsel and proctor of Perry, under indictment and under disbarment proceedings. Garland—the exaltation of whose character is further manifested by his eavesdropping performance as a listener-in on a telephone conversation.

Stebbins—retired lawyer who only takes cases for friends, representative of Charlotte Broad, the working girl, who divided her time between gay parties at elegant hotels in Boston, the lights of Paris, the mountains of Switzerland, and the society of Stebbins; Charlotte—who never asked for money but accepted loans from her lawyer friend. Stebbins, who can remember the loan and the parties ni Boston but has really forgotten whether he met his charming friend while he was travelling in Europe. Stebbins—who, knowing the character of his client and his friend, institutes a groundless suit upon a pretended promise of marriage against a man who has been married for three years and is living a decent life. Stebbins—who contrives a letter to be written to Pelletier so full of falsehood as to shock his unscrupulous client, who within three days time repudiates it in toto and substantially confesses the scheme of blackmail. This man is brought forward to accuse Pelletier, who, clearly and plainly, balked him in as bold a piece of attempted blackmail as ever disgraced a lawyer or defaced the records of a court. Suppose Charlotte Broad—and I throw this in by way of illustration—had not recanted; suppose Pelletier had lost the letter of confession: this case would now be pressed against Pelletier as one of the strongest in the catalogue.

Bond—agent for the sale of the Metropolitan Motors stock who made an affidavit at the instance of Coleman, the lawyer for Cabot, who also assisted in framing the testimony of Matches in the Emerson Motors case.

Buckley—who confessedly paid the blackmail levied upon Ackerman & Brummel, who afterwards asserted an unfounded and ridiculous claim for $65,000 for commissions in addition to a salary although his written contract specifying the salary had yet a year to run. Buckley—who was detected in conspiracy with one of the former blackmailing employees, who surrendered his pretended claim at the mere hint that his conduct was under surveillance by the authorities, although he was then represented by so good a lawyer and so gallant a soldier as Judge Logan, under whose advice he acted.

Papineau—the unspeakable, who lived in idleness at the instance of his wife's mother, who tamely submitted to the seduction and theft of his wife, who, while surrendering the custody of his own child, brought suit to recover the illegitimate offspring of his wife and her paramour, who settled his claims for damages for $1,000, and who then, concealing the facts, represented himself to Coakley as a wronged and injured man. Papineau—whose story is a mass of contradictions which could only have emanated from a brain degenerated by the vile habits of a debased life.

Bernstein—who told various stories upon the witness stand utterly at variance with his testimony before the Bar Association.

Myer Berman—whose religious zeal restrained him from riding in any wheeled vehicle on Saturday but whose avarice permitted him to keep a disorderly house not only on Saturday but all the rest of the week and, on every day save the sacred Saturday, to introduce the female habitués of his resort to lascivious male visitors.

Sam Berman—who, inheriting the instincts of his father, became a partner in his disreputable business, who falsified his ownership interest to the Licensing Board and repeated his falsehood to this Court, and who was finally convicted as a sharer and partner in the lascivious loot.

Louis Berman—who spent his days in pursuit of higher learning amidst the classic halls of Harvard College and his nights keeping the books of this hotel brothel.

Such is the character of some of the witnesses of the State who constitute the chief props to the rickety structure erected by the Attorney General.

Now I present you, in contrast, the attempted besmirchment of honorable attorneys. If Pelletier is held guilty, then Francis M. Carroll and Amos Stephens of the New York Bar are equally guilty in the Emerson case. If Pelletier is held guilty, then Charles H. Innes and Henry G. Wells are equally guilty in the Perry case. If Pelletier is held guilty, then, according to the testimony, Daniel J. Gallagher, named as a co-conspirator, is equally guilty, and Major Thomas L. Walsh is seriously, if not criminally, involved in the Emery case. If, in the Peters case, Pelletier is held guilty, then Henry F. Hurlburt, who arranged the settlement and paid the money, is particeps criminis; and Charles F. Choate, James A. Bailey, Thomas D. Lavelle, and another attorney too exalted to have his name even mentioned, advised the exact course of conduct taken.

There is also the general charge that Pelletier retained in his employ incompetent or dishonest deputies. This is a reflection upon

his own present deputies,—Daniel M. Lyons, Frederick M. Sheenan, William S. Kinney, Henry P. Fielding, David Mancovitz, and Daniel W. Casey. It is likewise a reflection upon all of their predecessors in office, and it is unsustained by a single word of credible evidence.

The lawyers specifically named as co-conspirators are Carroll, Gallagher, Innes, and the lawyers necessarily involved are Wells, Walsh, Hurlburt, Choate, Bailey, Lavelle, and the unnamed attorney. All of these attorneys have hitherto been of unimpeachable reputation, some of them being numbered not only among the greatest lawyers in Boston but the greatest in the United States. I stand in their defense and I hurl back every insinuation against their honor. But I repeat: if in these cases this man is to stand convicted, then they too must have upon their garments the smoke of the fire.

Moreover the veteran clerk of the Superior Criminal Court and his equally veteran deputy find the integrity of their records challenged and their capacity, if not their integrity, brought into question. The stenographer who took the testimony before the Grand Jury, finds his notes questioned and an insistence that is remarkable indulged in, that he shall write in the name of Pelletier instead of the name of Kinney.

The desperate straits in which the Attorney General found himself is manifested in these acts and especially by his conduct in placing Mr. Carroll upon the stand as his own witness, thus vouching for his integrity, and afterwards, for the mere purpose of securing the admission of what must be, I think, regarded as the perjured testimony of a convicted felon, naming Mr. Carroll as a co-conspirator, and this while the echo of Assistant Attorney General McCarthy's words, "I make no implication against Mr. Carroll," were still reverberating in this chamber.

Now, if your Honors please, let me for a moment analyze, the theory upon which the evidence of conspiracy rests. I assert, in my humble judgment, that if the theory followed by the State in this case as to proof of conspiracy, is allowed, no man is safe. All this evidence was admitted by your Honors upon the promise of the State that it would furnish the connecting link. Instead of first furnishing the evidence of the meeting of minds and the common purpose of the concerted action, they began at the outskirts and proved that A said to B something about C. Their method then was to follow that by showing that C did the thing, and then whether the thing he did was natural or just and right or not, the claim was made that that established the conspiracy.

Let me state that concisely. The method of the introduction of evidence and evidently the theory of the State, was this, that if A, in a private conversation, tells B that he controls C and that he can, by reason of his control, induce C to do a particular thing, and afterwards, C at the request of A does the act that A said he would get him to do, that this makes C responsible for the plots and acts of A and all other persons with whom they may associate themselves. That has been the method of proof in every one of these cases, if your Honors please, in every one of them. Where does it lead? The theory is at war with

the law and with common sense. If it were adopted, no man would be safe unless he secluded himself in an hermetically sealed room and cut the telephone communications.

A simple illustration will suffice: Suppose that A is a lawyer—let us say Perry is a lawyer—and B is a litigant in the court of some judge and a continuance of the case or some particular order is desired. Perry, in disregard of the truth, boasts that he secured the appointment of the judge from his friend the Governor, that he can secure any favor he desires, well knowing that the thing he has said is false, but also well knowing that the thing he is about to ask can be justly and properly granted, well knowing that any judge would, in the ordinary course, upon proper presentation and argument, grant the order. Thereupon he telephones the judge, speaks even in a familiar way, possibly calls him by his first name, and asks for an appointment in regard to the case in question. At a proper and usual time he appears before the judge, presents his reasons for the desired order, and secures it. The judge has done exactly the thing that A said he would do, but he did not do it because of any control exercised over him by A, or for any sinister or corrupt motive, but upon the merits and in the exercise of his sound discretion. The years roll by, the litigation is disposed of, the dust of time has settled down and covered the records, the whole is relegated into the limbo of the past. Suddenly it is disclosed that A charged his client an enormous fee and obtained it, and the client asserts that he paid it because of a supposed influence of A over the judge. It even appears,—which is not the case here—that A was engaged in a general conspiracy with a number of other people of corrupt nature, connected with the litigation in question. Thereupon the judge is impleaded as a fellow conspirator and held responsible for all the criminal acts, of which he never heard, of which he never dreamed, and mayhap, the connecting link even then is forged by perjured hands, working upon the anvil of hate, driven on by some suspicions in the minds of those who have an interest at heart.

Write that doctrine into the law of Massachusetts, that a conspiracy can be established in that way, and your Honors will have this case, and from your decision here rendered there will flow many other decisions. I do not pause to remind you of your duties and responsibilities. No men know it better. And its mere mention might also be taken as an offense. But, it is not so intended. Write into the law of Massachusetts, this great old Commonwealth where Webster thundered for the Constitution and for human rights, whose hills were stained with the choicest blood that ever flowed from patriots' veins, patriots who fought for liberty, that upon such evidence and such connection as this, men's rights and honors may be destroyed, that they may be impaled and crucified, the structure they have builded through the years of their lives be made to crumble into dust, their mothers' hearts broken and shame be put upon them! It is not the law. No man's life or honor, more precious than life itself, would for a moment be safe with such a law.

Conspiracy, proven in that way, and yet that is the method pursued in substantially every one of these cases, as I shall show your Honors

if my time permits and your patience will indulge me. Conspiracy is the meeting of two minds, I repeat, to do an illegal thing or to do a legal thing by illegal means. It implies the wilful entering into a corrupt scheme. The scheme must be known to a man before he can be a party to it, of course, must be known to both parties or there is no conspiracy. While it can be proven by circumstantial evidence, the circumstantial evidence must exclude every reasonable theory of innocence. Nor can this defect of the evidence in particular cases, an utter failure of proof in each specific instance, be pieced out by adding together evidence in other cases, first, because there is no charge of a general conspiracy between Pelletier and Coakley. In the absence of such a charge that kind of case cannot be presented or that kind of judgment justly rendered. Second, the cases in which Coakley was concerned when subjected to analysis show that they were not and could not be part of any general plan. They are isolated instances, the inherent nature of which forbids the conclusion of any general scheme or plan. All of this I hope to make more plain as I proceed.

And here I intend to pause, with the Court's permission, to say a word in regard to Mr. Coakley. I do not criticise, far be that from me, but I have been somewhat struck as we went through this case that it seemed that if an act were attributed to Coakley, even from the first, somehow that act always was permitted to come into the case. And yet, if your Honors please, so far as this record stands, and on this record the case must of course be tried, there is no more of a presumption against Daniel H. Coakley than any other man. He has not been convicted of any felonies. There may have been much said about him in rumor, I do not know, but when we come to measure his acts in this case is it not true that we must test him as we would any other member of the bar, and more than that, may we not remember that during these occurrences he, if common rumor is to be credited, stood high and did an enormous business, just as Mr. —— I will not name other lawyers, many other lawyers stand high now doing a large business. So, approaching the case from that standpoint,—and here I call attention now to the utter failure of proof in regard to certain matters,—it is intimated that Coakley exercised a general influence over Pelletier. The proof offered is that in some eight or ten instances what Coakley sought to have done was done. It is also in proof that in at least two of the cases in which evidence was adduced Coakley failed to get what he wanted.

In the Tripp case Pelletier, after listening to Tripp's statement, told him he would not prosecute, and sent him to Coakley to tell Coakley his decision. The case was never prosecuted. The Metropolitan Motors case, in which Pelletier after his investigation told Coakley, Bernstein and Fox, that he would deal with no lawyers in that case and give them no hearing, but would proceed with his investigation on his own lines and in accordance with his judgment, was not brought before the Grand Jury. The record furnishes additional evidence that the Gordon case, in which the Attorney General knows Coakley was counsel, was dismissed, presumably because there was no case. It also shows that the A. T. Smith case, in which Coakley was charged with

being the chief conspirator, was dismissed because Mrs. Smith, the principal witness, refused to testify to facts which would enable the State to proceed.

There is no evidence as to the number—and this I call attention to—there is no evidence in this case as to the number of times Coakley applied to the District Attorney's office. He may, as far as the record is concerned, have applied a hundred times and been a hundred times turned down. The State utterly failed to fill that gap or to furnish that proof. All that stands here now is that in some ten or twelve instances, scattered over seven or eight years, Coakley got what he wanted, and, as I think we can show, got nothing more than was proper to have given to any lawyer. But mark you, I repeat, the State cannot take the position that Coakley got what he wanted in a majority of instances, or that he exercised any kind of control, for the State utterly failed to prove that these were the only cases he had there, or substantially all of them, and so far as the record is concerned he may have had a hundred or a thousand cases and been rejected in his application on all but these. It is the duty of the State to prove its case by evidence, and no inference is to be indulged in a case like this.

Another inference sought to be drawn is that the failure to prosecute an indictment is in itself evidence of a corrupt mind or heart, or that it is an act of non-feasance warranting removal from office. Two or three of these cases rest upon that bald assumption. And also it is further intimated, at least I get such an intimation from the conduct of counsel in the course of their evidence, that there is something sinister in an attorney visiting a prosecutor's office and asking that criminal proceedings be delayed or discontinued. Apply this rule, and under the evidence adduced in this case, already adduced, a large number of attorneys would have been guilty of bad practice, for it is in evidence, it seems indeed to be the custom here, when an indictment is about to be brought or when an investigation is on for the attorney of the party who may be accused to ask for a hearing and to get it,—and it is a good practice too. It would save, and has saved, the wrecking of thousands of reputations, of course, of heartaches innumerable and of injury incalculable. But let us apply the rule of failure to execute an indictment, and where stand we then?

According to the evidence in this case District Attorney Saltonstall would be culpable, and Attorney Garland, who appears here both as a prosecutor and purifier, in the most lamentable situation. The evidence discloses that there was pending when Saltonstall took office an indictment against Perry, that this was called to the direct attention of Saltonstall by Perry and Garland, who visited him for the purpose of procuring a discontinuance of the prosecution, yet the strange fact remains that the indictment has neither been dismissed nor has the defendant in the intervening months been arraigned. He continues at large under the protection of Garland, who, if we are to exercise common sense and draw the natural inferences visited Mr. Saltonstall to prevent the arrest of his client or to obtain the dismissal of the indictment, in order to aid him, among other things, to retain his place as a lawyer at the bar. Consider, if you please, the spectacle of Pelle-

tier being tried for merely permitting Perry to make a statement before the Grand Jury, and the performance here described. With an indictment pending against him Perry is able to forestall arrest and arraignment, and is brought into this court to give testimony to sustain a charge for the removal of Pelletier, while the Attorney General permits him to be at large and the processes of the law to be unexecuted. The theory of the Attorney General seems to be that he is permitted to dc these things, but that Pelletier is to be condemned for doing the very things the Attorney General himself practices. And I do not say that now to criticise the Attorney General. The trouble with this case is that the Attorney General assumes that whatever Pelletier does is wrong, and brings charges here against him, massing them, painting them as irregularities, yet they are the common practices of the courts and must be the common practice if business is to be dispatched in any sensible way.

Now, if your Honors please, in the light of what I have said, or in line with it, I come to call attention very briefly to this question of bank accounts, and there again the evidence utterly fails to connect anything. I say it boldly, and I say it with all possible emphasis. It fails because, first, there is no relation shown between the acts. It is not shown in this case that Coakley ever made a check payable to Pelletier, or that he made a check payable to anybody else and that person transferred the money to Pelletier. No scrap of paper exists of that character. No human being has come forward to testify that a penny of money ever passed from one of these men to the other. Though malice with a microscope has searched to find a little speck somewhere to indicate that fact, it was not successful.

What is introduced in evidence? Two bank accounts. The one of Coakley and the other, of Pelletier, showing certain deposits and withdrawals by each. So far as the bank accounts were introduced they showed substantially the same general course of business throughout the years. Whenever the State was able in this long course of the books to find items in each of the accounts that bore some resemblance in amounts, they spring to the conclusion—purely imaginative—that the money passed from one to the other. I repeat in part what I said the other day. Apply that rule, and I can convict any two men of crime who put into banks any considerable sums of money, or who transact any considerable business, because there will come inevitably days when similar, or somewhat similar sums will be deposited or withdrawn. And in this case frequently the State for its innuendo has to wait some two weeks or more to find a corresponding item. But what shall we do with this rule of circumstantial evidence which I adduce, that everything is presumed to be innocent until the connection is shown by a change of circumstances, which excludes every other reasonable hypothesis. Apply that to the bank account. What are the reasonable hypotheses? That a man might have gotten money from ten thousand sources, all of it honest, that he may have paid out money in ten thousand places, all of it honest, all of it without taint; until the State shows that it was not so paid out,

the evidence is zero, and worse than that it is an insult. Apply I repeat, these rules to any act of his.

Now there is a way that bank accounts can be proven. There is a way that they can be introduced, and they can be introduced without proving the actual passage of the money, when you have proven a crime has been committed and a bribe has been passed—when the corpus delicti has been established—in order to sustain it and not to prove it, but to sustain it after proof. You can prove the possession of the particular thing alleged to have been stolen, or the particular bribe passed. Nay more, you can prove the possession of money by a man alleged to have been bribed, or the possession of money by a man alleged to have committee a theft or a robbery without actually identifying the money. But before that—before you can do that you must introduce evidence excluding every other reasonable hypotheses as to the source of the money. The law was never better stated than in the instruction of the court in the case of *Commonwealth* vs. *Coyne*, 228 Mass. 269. The opinion in the case is by his Honor the Chief Justice, who does not say, it is true, that everything in this instruction, is necessary, but who does approve the instruction and says that the instruction protected properly the defendant's rights. I have no hesitation in saying that nothing less than this instruction would protect the defendant's rights and that the learned Judge who tried the case at nisi gave the law as it stands as the law is. "It was not equivalent" said His honor the Chief Justice, "to the admission of evidence of another crime. That was not the ground on which it was received. The jury were not permitted to consider it in that connection. But the jury were instructed carefully to disregard this evidence upon the question of breaking and entering and to consider it only if the breaking and entering was found to be proved by independent evidence, . . . " That is the language of the Chief Justice. "And even then only if it was found that the defendants 'had no other source of income to account for the possession of the property found in their possession, and if they also found that the money and jewelry were the proceeds, or a part of the proceeds, of the property stolen from the Wallace residence, they might consider this evidence insofar as this property accounts for the defendants not having the specific articles stolen in their possession when arrested; that otherwise they were to disregard the evidence entirely.' " Now that rule protects a man. That rule is, first, that evidence of the possession of money is not evidence of the primary commission of a crime, until the crime has been first established; and second there must be a finding from the evidence that the defendant did not have any sources of income which would account for the possession of the property. Apply that to this case.

There is no evidence that Daniel H. Coakley might not have been doing business bottomed upon a fortune of one million, or two million or ten million dollars. There is evidence that he had two or three bank accounts; that he did a very large business from which one would infer the possession of a large fortune. There is no evidence as to Joseph Pelletier's fortune, or money. The State utterly failed to connect this evidence and make it competent, although they told this court time

and again they would. There is no evidence that he is dependent upon his salary. He is not. There is no evidence as to how large a salary he draws from other institutions, or what they are. There is no evidence as to the amount of money he made from his private practice. There is no evidence as to whether he had a private fortune of his own. There is no evidence that the money he put into his safety deposit box might not have come from any one of ten thousand sources. There is no evidence that the money he put into his bank might not have been trust funds, clients' funds, his own funds. The State is left suspended in the air. The evidence is unconnected. You have failed to prove your case, and without proof the evidence should go out of this case, and never should have been admitted except upon the promise to connect it up, and that promise has not been kept.

RUGG. C. J.: The court will take its usual noon recess.

AFTERNOON SESSION

RUGG, C. J. You may resume your argument, Mr. Reed, if you please.

MR. REED. May it please the Court, if I am unable to conclude within the allotted time, the Attorney General has said to me, very generously, that he is quite willing my time should be extended if it is agreeable to the Court,—of course, a similar privilege being granted to the other side if they desire it, and I shall try not to weary your Honors a moment longer than seems to me to be absolutely necessary.

I do not intend, after what I have said, to discuss these bank deposits in detail because, as I have asserted, they prove nothing, in the absence of the limiting evidence which the State was in duty bound to produce; but I cannot refrain from calling attention to one item as shown upon the face of these accounts.

It will be remembered that one of the first items introduced was, presumptively, in connection with the Berman case. It seems that the transaction, on its face as it originally appeared, took place about November 6; and so, with great glee, the State introduced in evidence the deposit of Mr. Coakley on that day of $32,593. But subsequent evidence showed that, at that time, the money had not been paid by the Bermans at all, and that Coakley went to the bank and borrowed that money, and a deposit slip of $67,000 was introduced by the State and, on examination, it was found that the deposit slip was made up of two items, one a loan of $32,500, with a note given, and the other a loan of an amount on a different note which made up the sum of $67,000. And it was further shown that Coakley, on that same day, made his check for the $32,593.43, which was the amount of the loan made at the bank, with the accumulated interest figured up to the time when the Bermans afterwards paid the money. I am in error in my statement that Mr. Coakley on that day made that loan. The loan was made on October 10, at the time the transaction with the Bermans was closed up. But those are the facts disclosed in the records, with

the correction I have made. Accordingly, it follows that if, on November 7, he had withdrawn $5,000 and gave it to Pelletier as the pure insinuation is, he would have been paying money out of pocket while he was already borrowing $32,000 for the Bermans.

And so I might go through this record. But I come back to the rule of law that there must be a connection shown, and the mere connection cannot be deduced from the facts of deposits and withdrawals, because, under the rule of law, innocence is to be presumed in the first place, and, in the second place, the evidence must be of such character as to exclude every other reasonable hypothesis. And the whole world of business lies there, to account for every one of these transactions.

I do not presume to introduce in evidence a document, but may I use a document merely as an illustration of what might have taken place? Simply in my argument let me assume—going to the sixty-two hundred fifty dollar item of which so much was made in connection with the Buckley case—let me assume that that is the check, and let me assume that it was endorsed by one J. B. Moran, and let me assume that J. B. Moran borrowed the money, and let me assume he gave his note of hand:—not for a moment do I refer to a thing of that kind as evidentiary, but I refer to things of that kind to illustrate how easy it is, by pursuing the wild course of imagination, to imagine anything, and how careful the law is to require the exclusion of the honest purposes and honest course of transactions.

Let me assume, by way of illustration only, in the Emerson Motors case, where the terrible fact is shown that Pelletier put $5,000 in the bank some days after, without a word to indicate where it came from—and the check is in evidence, of which this is a copy, and hence I properly refer to it. It shows that the money drawn out by Coakley was drawn to Daniel H. Sugrue, who sat here in this room and whom the State declined to put upon the stand—one of the counsel voluntarily casting aspersions upon the man's character. Was that the reason they would not put Mr. Sugrue on the stand? Have they been so choice in their witnesses as anything that creeps upon its belly or flies in the air has not been so debased they would not put it here upon the stand if it would make capital against Pelletier? But they did not put him on the stand. And so they trace the money into the hands of Daniel H. Sugrue, and there it rests. But let me now suppose, by way of illustration only, that Sugrue took the money and paid it out in settlement of a case to an attorney of this town and took his receipt, and that all this appeared in the Bar Association hearings, and that the Attorney General did not frankly put it all before this Court. But that is argument! I offer it only as argument!

And what more do you get, as I pass through and finally dismiss these banks accounts? It is said, why, here is a check which was cashed across the bank for several thousand dollars and that is evidence of some sinister purpose. I have recently had occasion to go to a certain bank account, not in this case, and found where checks for four, five, and six thousand dollars had been cashed across a counter—nay, more. It is the ordinary course of checks that they do not go through the bank

upon the day they are drawn; and these accounts which have been introduced here, let me challenge your attention, your Honors, to the fact, do not show the date when a check was made: they show the date a check was paid. And I could show you checks for thousands of dollars which have been carried for months and never cashed, but in the ordinary course examine, if you please, your own accounts and see how many checks came in from two to ten and twelve days afterwards. And so the evidence that a check was passed through a bank upon a certain day is no evidence at all that the transaction took place upon that day.

Thus, this evidence that has been produced ceases to be evidence, for it is in no manner connected up as the law requires. I take it out and break the chain of these conspiracies, as I believe they must be broken, by the hammer of the law, and there is nothing in this case on which to rest even the vague suspicion which malice may conjure up or envy may promote.

Now, if your Honors please, very briefly let me take up these various cases.

The Berman case. When is the scheme laid? October, 1916. Seven years have come and gone, and Mr. Berman says his suspicions were not even aroused until he read something in the newspaper, and then, if I recall the testimony rightly, be began discussing the case with some conception of getting money back.

Now what is the case? It is that Corcoran, then the District Attorney of an adjoining county—however much debased he is today, to what vile estate he may have sunk—was then, seven years ago, regarded as an honorable citizen and was the prosecuting attorney of an adjoining county, clothed with all that elevation to a high office can confer. He telephones to Pelletier, a brother district attorney, and says, "Please get the register of this second-class hotel." Was that unusual? Why, I have been prosecuting attorney, and a mere telegram from a prosecuting officer whom you had never seen, a telegram to Missouri, even to the State "west of the Mississippi," from Massachusetts, asking me to obtain the register of such a hotel, would have received instant attention; and if I had wired back here to any prosecuting attorney I would have expected the same courtesy. The chiefs of police of all the cities do that kind of service for each other. It is of the very essential of the detection of crime. Are you to draw from it an evil purpose? Not unless the evil purpose is present. The act itself is as innocent as the course pursued by all the officers of this country, as any act is ever done. It may be arbitrary. If these people had refused to give up their register, the policeman would have had to turn around and left. But people ordinarily do not. I say it is the common and the usual thing. The Attorney General of this Commonwealth would wire the Attorney General of New York tonight, to please hold John Smith until tomorrow morning, and he would be held as certain as the message was delivered. Now, that much Pelletier did. What followed? The register was delivered to Pelletier and soon thereafter there appeared in his office, Meyer Berman and Isaac Gordan. It does not make any difference for the purposes of

this case whether they first visited Mr. Coakley or not. Their testimony is that they went directly to Coakley, who had been their advisor before. Is Pelletier responsible for that act? What a strange coincidence, to be sure, if this were a conspiracy, that these men went immediately to their own attorney, if this was the man who was to consummate the conspiracy against them. Such a conclusion does not jump with common sense. It is a strain upon credulity.

They came to him—and this is all that happened—they asked him why he had sent for the register. He told them that he had sent for it at the request of District Attorney Corcoran of Middlesex County, and that that was all he knew about it. Whether it occurred there or whether they had first been to Coakley, we do not know, for there their own story disagrees with itself, if I recall the evidence aright. One of these men said, "We will have to go and see our lawyer, Coakley, about it." But Pelletier did not suggest it. Even Meyer Berman does not say that. And it is one of the marvels of this case that he did not say it, for who is there in all the world will think he would not have said it had he thought it would suit the purpose of the hour. That is Pelletier's sole connection with this case, and not one word more to it. I am not concerned in such a state of facts as that, for what transpired between Coakley and Corcoran, the State does not make Pelletier privy to it by any act, by any thought, by any single link of evidence. Nay, they have not by so much as the weight of one poor farthing, furnished evidence of connection. But, if we were to take the evidence as it stands here, these three or four or five men met with their lawyer, Coakley. He told them—and there is not a word of countervailing evidence—that the charge was that Meyer Berman had introduced in his resort, the wife of a man who had there been debauched, that this man claimed heavy damages, and, under the advice of their counsel, they settled. Why did they settle? Men like Berman do not pay out $35,000 unless there is guilt. They do not leave their money behind and run, unless the law is hot in their pursuit. Now, Corcoran then may have been a wolf; Corcoran then may have been a blackmailer, but there is no evidence. And Coakley then may have been as bad as his worst enemy would paint him. I do not say so. I know nothing against this man. He may be the most abused man in Boston for aught I know. But, if these two lawyers and these three or four or five Hebrew gentlemen transacted that business there, how is it connected with Pelletier, whose single act is an honest act, an ordinary act?

I say there was guilt. They settled a civil claim, and they paid heavily. Now, let us follow the story on. Some three or four months elapsed. They did not pay the money that day, you will remember. There was no great haste. There was only $2,500 paid that day, and they had some three or four weeks in which to pay the rest. They had all of that time to learn that their own lawyer had tricked them if he did trick them, and then they came in and paid the money. There was no fee exacted. The money was borrowed in the bank by Coakley to make good for them. I think that is in the record. If I have inadvertently said something outside the record, I will withdraw it. I

think that is in the record. It is hard for me to keep what I hear in this room and outside of it separated, but I do not mean to trespass on the rules.

Then a year passes, and Sam Berman says, "Coakley sent for me and said, 'I want $15,000 more.'" "What for?" "They are after you again." This is a year after the conversation with Pelletier. "They are after you again." Now, don't you know, your Honors, that that was a fee, that Coakley was charging them for the work that he had done for them, that the claim that it was blackmail and that these Jews gave it up without a protest, is a falsehood so monstrous that if it had been uttered by Ananias and Sapphira, it would have fully justified their fate. You do not need evidence to refute a story of that kind.

I have said these Jews. For myself I condemn no race, and from my tongue has never fallen an aspersion upon a man because of his blood. Since I have had to make this reference, permit me just to say that in every race there is good and bad. The Jewish race has produced some of the greatest characters of the past and some of the greatest of the present. The Jew is as good a man as lives, but a bad Jew is as bad a man as lives, and these two things, because of the very strength of the Jewish character, which, turned to good account marks the highway where blazes the pure sun, or, seeing fit to take the other course, brings the very genius of his race to bad account. As to the Bermans you may make a choice. You saw them on the stand.

I have heard much of Daniel H. Coakley and I have met him. He is a very ordinary looking man. It seems he prospered here at your bar for many years, and no one discovered anything remarkable about him. He is even now a member of your bar, a quiet, modest and beseeming gentleman. But, he must be possessed, if you accept this story, of hypnotic power, the like of which Svengali never had. Svengali could not make poor Trilby sing with half the readiness that by the mere waving of his hand, Coakley made Berman give up $15,000, that gentleman who loved the touch of gold so well he would coin it in a brothel and take it for the hire of a lewd woman.

And he gave up $15,000. All Coakley said was, "Give me $15,000, they are after you," and he dove into his pockets and shoveled it out. Is there anybody here believes that? The Attorney General doesn't believe that. He can't. He has too much intellect. That is that case, and that is all there is to such a case.

Now let us take the Emerson Motors case. What was the State's theory here, as plainly reflected in the questions of the State and in the manner of its marshalling evidence as though it had been painted broad upon the wall or stated in the open court? It was that Pelletier himself conceived and set in motion an investigation of this concern, that he advised himself with reference to its infirmities and weaknesses, that then he caused its agents to become alarmed, that they were brought here to this town through some sort of connivance by somebody not named, perhaps by Carroll, afterwards named as co-conspirator, that Carroll carried them to Coakley and that Coakley alarmed them to the point where they would disgorge, that they repaired to Pelletier's office, and that Pelletier then, having no knowledge through the police

of what had been discovered, evinced a complete knowledge of the case, and that therefore the scheme must have been his. And, oh, with what care the State had the witness who was sent to New York, Mr. Waite testify that until the morning of the 5th of October, he had not reported the facts that he had discovered in New York, yet that Pelletier knew these facts, hence some mysterious source and hence, again, the conclusion that he, Pelletier, had devised this scheme. But as we proceeded on in the case a little way, and after the State had carefully proven by one of its officers that he did not report until the morning of the 5th it happened that Chief Inspector McGarr was put upon the stand. I never saw an officer of the police who impressed me more as an upstanding man than Inspector McGarr,—clear headed, careful, straightforward.

And now what is the story as we receive the facts? Not the distorted picture reflected from the distorted mirror of an imagination inflamed, but facts? Plain they come forth and clear as the running brook. Inspector McGarr started the investigation himself. He read the advertisement in the newspaper. He brought it to Mr. Pelletier's office and said, "What do you think of that?" and Pelletier said, "I have just been looking at it as I came up on the boat. What do you think of it?" "I think it looks bad. I have a notion to investigate." And Pelletier said, "Go to it." I think those were the words in the evidence. And so Inspector McGarr started it, and Inspector McGarr went to it.

And then Inspector McGarr put on the case Mr. Farrell. Farrell was the man by whom the State sought to prove that Pelletier had this knowledge he should not have.

And let me now conclude that phase, so that I may not pass it by in the end. Inspector McGarr not only swore that he started this investigation, but he swore that from day to day he had reported the facts to Pelletier, the facts found here, the facts found in New York, so that the mystery of Mr. Pelletier's knowledge was cleared up by their own witnesses. He got it from McGarr. And all your house of cobwebs blew away by the breath of truth from one of your own witnesses.

Now, briefly. Carroll went to Matches. Let us get this picture as it is. Here is an institution advertising in a newspaper. Nobody knows that it is not a perfectly straight institution. No District Attorney wants to ruin or destroy a legitimate enterprise. All understand how serious it is to let the breath of suspicion go out against a business house, and so they proceed with some care. But, on the other hand, people of Boston and the vicinity have been, I presume, as they have in other cities, jobbed and jobbed and jobbed again by stock salesmen, and here is a thing that on its face does not look just right. The District Attorney could have sat back, but being a man who wanted to protect his people he said to the police, who started it, "Yes, go ahead. If you need to send a man to New York, here is your warrant to send him on." There were people who knew that the stock sales of this scheme of sales was a bad and rotten thing. My own opinion is the Emerson Motors Company plan of building a cheap car was

entirely a practicable thing. If inexpensive automobiles can be built by Henry Ford they can be built by others. The whole question was, as far as the factory is concerned, whether the scheme was sound, and evidence has been brought forward that the best automobile men in the country were engaged in it; but the stock sales scheme was probably unsound. They were making misrepresentations in their advertisements to sell their stock. And while the stock sales scheme was unsound, it is nevertheless true that many an institution has been floated to success and the stock sold at enormous discounts to begin with. It is not worth while to argue that. The simple thing that Pelletier had before him was this advertisement, to begin with.

The investigation proceeded, but Matches knew. He knew he had been sending out letters that Pelletier never saw, one of which was introduced here in this court, grossly misrepresenting. He knew that the statements that were being made daily by his men in selling stock were grossly false. But other people did not possess the same knowledge. All that Pelletier knew what what the police found out, but Matches knew. How do I know he knew? First, he knew his own acts, and his men who were with him knew. Behold, Officer Farrell goes to the office and asks to see the books and makes inquiries. They are answered. He goes over to look at the automobile, and instantly the four salesmen from the salesroom leave the salesroom, fly to the ball park and call Matches form the box in which he sits in almost as lordly fashion as he sat in this room, beholding the World's Series, and he comes out. Is that ever done by men who are not alarmed? They knew. Pelletier did not know that. The police did not know that. They telephone to New York. They get in touch with Mr. Wilson. And here at home they rush on a Monday morning succeeding these events of Thursday, or Friday, or Saturday, to see Mr. Carroll. Carroll says, "Why, I think there is no trouble. The fact that the police are up there does not mean anything. You are an honest concern. What difference does it make?" Wasn't that the attitude of an honest lawyer, who believed he was representing an honest thing? Would it not have been the attitude of any of your Honors if you were yourselves practising at the bar? ' I think so.

But Matches is not satisfied. He is telephoning back and forth to New York, I know not how many times, "I know there is trouble." "I know there is trouble." How did they know it? A police officer had been down looking through that plant, and they feared an investigation, as all crooks fear investigation. It needs only a shadow to frighten the criminal. And so they hurried Mr. Stephens, then the attorney of one of the great insurance companies of New York, as shown by Matches's testimony, over here, and Matches takes him and Carroll in a room and tells them there is trouble. "You must find out." I don't know whether it was that day or the day before that Mr. Carroll had said—no, it was that day—"This is going to be a serious matter." He had found out. He had gone and seen Mr. Coakley in a perfectly natural way, and asked Mr. Coakley to find out if there was an investigation, and said, "Coakley can find out, if it is proper for the District Attorney to let him know." Well, now, undoubtedly

Carroll thought that Coakley was in some way better fitted to get that information than himself. But is Pelletier to be held responsible in this case because that was the estimate Carroll put upon Coakley? He might as well have gone, perhaps, to any one of fifty other lawyers; he might as well, in fact, have gone himself. But Coakley had, I think, some reputation here of being a lawyer of very great skill. "Yes. There is an investigation going on," that is all they got. All that Matches needed was to be sure there was an investigation going on, and then he knew the facts that Matches might confront. Then what? Stephens says, when Carroll tells him "if there is to be a real case you will have to get another lawyer, a man who can handle that sort of business." You saw Francis M. Carroll on the stand. I don't know him, save as I saw him here. He may be a man of superb ability; I cannot tell. I wouldn't say from his appearance one would pick him exactly as a champion in some great contest in a criminal court. Undoubtedly these people knew that if information was filed it would destroy their business. Undoubtedly Stephens knew it because it was a fact. Undoubtedly Matches knew in the guilty heart of himself that it might mean the penitentiary, as it afterward did mean to him in this very case, only it was tried in New York. But Pelletier didn't know it. Now what happened? Stephens went over to Coakley's office with Matches and laid down the arguments in this case. What were they? "Yes. The advertisement does misstate a fact or two here. It says we have a plant, which we are not able to get, but we are going to get a plant. We are going to do everything we said we would do everything we said we were going to do in as good or a better way. We have the money to do it. And we haven't wasted our money. We have no big salaried officials. We are an honest institution. Here are these great automobile men whose names appear upon the directory. For God's sake don't destroy this great enterprise and bring injury upon a lot of innocent people who have bought stock. Can't we get this thing before the District Attorney?" No trouble about that. "I'll take you over and introduce you to the District Attorney and you may make your own statement and I will back you up. But let's know what the facts are." And Coakley pinned them down as a smart lawyer does with every client that comes to him, just as I would do tomorrow. I would insist on knowing what there was in my client's case. Undoubtedly there was a serious statement. They went over, however, to Pelletier and they found Pelletier in a very inquiring mood. He was taking nobody's word for it. He had had reports from McGarr. "Where is this factory? You have made that representation." And Mr. Stephens made the explanation. "How many machines have you made?" I think was asked. And so he went through the four or five points and finally, it being stated to him that they had this money, "I will not accept your word for it, gentlemen. I want an auditor's report."—Then the appeal is made "Do not destroy the business; give us a chance; everything is straight." And finally he says "I'll consider it, but if I do consider it you must quit selling stock in Massachusetts and you must agree to pay back to my people every dollar they ever paid for this stock if they demand it." I know of no picture

of an officer in the public service more commendable or brighter than is that picture. Here he sat on guard for his own people. He was unwilling to take the responsibility of destroying a great institution, upon the one hand; he was unwilling, on the other, to permit any man to sell stock of that institution here in Boston, lest in the one instance he might destroy valuable property rights, and a great scheme; lest in the other instance his own people might have their pockets picked by some stock-broking-adventurer, and in his uncertainty he said to them that day "I will take it under consideration. I want this report of the expert or auditor. I want to know they have got this money, that they are not a mere fly-by-night concern." Now that is the evidence from their side. From the State's side. And then what happens? Not a word has been said in this office even to Matches, in whose evil heart you could rear weeds of perjury upon the instant, if he could but profit thereby. He says they went away without a word and that caused him therefore to have suspicion. It is true, he says, that Pelletier said to Coakley "Well, Dan, have you got your fees yet?" It might have been a mere jest, if ever said. But if it was said and said in any sinister way, then Matches did not tell the truth when he said he left them without any intimation of wrong. But what about Francis Carroll? Who are you going to believe now, Carroll the lawyer, or Matches? Carroll gives that account. He gives it at the instance of the State. He did not testify to such a phrase. And if the State could have obtained it—could have had that witness testify—not as a co-conspirator, but as an honorable citizen—how greedily it would have been wrested from him. And then these gentlemen came over to settle their own affairs; Coakley demanding what may be regarded by this court as an exorbitant fee. The District Attorney—the decision of the District Attorney has already been foreshadowed, and that it will be favorable, but they haven't yet produced the evidence which is to come along, of the deposit of the $300,000 in the banks. And Coakley bargains not for a $20,000 fee, but according to his practice and usage a contingent fee of $500 and $20,000 if he succeeds. And if he did succeed how well it would be worth $20,000 for this institution would have been protected from persecution that might have wrecked it—would have wrecked it. It would have been protected by a legitimate argument largely made by Stephens. Matches knew how much he was being protected. Wilson, the head stockbroker, undoubtedly knew how dear it was to him. And so they brought the money over here and Coakley said he wanted it in cash—a very natural thing for him, at least, to do. But when the money came Carroll put it in the bank where the plain record was laid down, and checked it out to Coakley. And now the whole deal is closed. And then the next day Matches puts into this case the only thing that could cast an aspersion upon Pelletier. And what was that? The conversation between himself and Carroll in which he says that Carroll said to him that the money had to be divided with Pelletier, or intimated it. He didn't say it directly. He drew that inference. And then this wretch states that he continued on friendly terms with Carroll and the evidence is that Carroll continued to represent him as an attorney. Now let us take the measure

of that thing. What in the name of Heaven did Pelletier have to do with it? How could that conversation bind Pelletier? Where is the conspiracy that is shown to do aught that is wrong? Where are the things that transpired up to this moment that any honest man might not have done—would not have done? Where is the evidence that Pelletier knew a cent had been brought over from New York and that Coakley was to receive a fee; that Carroll was to have a part of the fee, or did receive part of the fee? Where is the evidence? There is no such evidence. Then we look at the story of this man Matches testifying here under oath, testifying before the Bar Association, admittedly hoping it will help him in his criminal case. His criminal case that was no sooner closed than he changed attorneys and got Mr. Coleman as his representative. The same Coleman who went out to Ohio and got the affidavit of Bond to be used in these proceedings against Pelletier and Coakley. This same Coleman who came over to Boston with Matches when Matches was to testify before the Bar Association. The same Coleman who was in connivance—who had met Perrin, and who like Perrin had talked the matter of the written statement before it was delivered to the Bar Association; this statement that was refused three or four times. What were these men doing—this man Coleman whom Bond says he learned represented Cabot? What were they to do in gathering up this evidence, getting these affidavits, but framing a story to get Mr. Pelletier for the purpose of aiding in some mysterious way the man Matches then under sentence and now under final conviction? The same Matches who, for some mysterious reason and by some mysterious influence, is kept out of the penitentiary until he can testify here, although the writ of certiorari, the last step that could be taken in legal proceeding, was overruled on the 21st day of October last, and evidence is delivered by that man of an alleged conversation he had with Mr. Carroll, out of the presence of Mr. Pelletier and no human being claiming it was ever communicated to Pelletier. He hears of it first in these proceedings when the scream of perjury and malice, pouring from the lips of these creatures, gushes as a flood about him.

Now, first, as to its competency, in the absence of any proof to connect. And, second, will this Court believe Matches as against the testimony of Mr. Carroll? They were both witnesses for the State. Will the Court choose the evil witness, the convicted witness, the criminal witness, produced as against the reputable lawyer produced on the same side—not by our side but by their side. Which is to be chosen? Aye, the testimony of a man who himself admits or charges himself with being a criminal, who comes in then to take away the character of an honest man—on such testimony are human reputations to be wrecked? Why, sirs, if I had a common, yellow dog, I would not convict him of sheepkilling upon the testimony of a mangy cur with his mouth full of wool. I would not convict an honorable citizen upon the testimony of an admittedly dishonorable man. If it is ever done, then the heavens of justice may collapse, and these tribunals which are the palladium of our liberty become the instruments of wrong.

So much for the Emerson case.

Now, I shall not spend so much time on other cases. My colleague warns me that I am taking too much time.

Let us take the Warren C. Daniel-Metropolitan Motors case and in the cold light of reason, as far as possible analyse it. There was an investigation—and this comes right after the Emerson Motors, which had excited suspicion—and another concern is here selling stock, and this investigation is started. Assistant District Attorney Webber comes in to Pelletier one day and says that a lawyer named Fox had said to him that Coakley had said to a lawyer from New York representing the Metropolitan Motors that he could fix the District Attorney for $10,000, or words to that effect.

What happened? Now, let us get this picture. Here sits a prosecuting attorney, and one of his deputies comes and tells him of the astounding tale. Thereupon the District Attorney immediately telephones to Fox to come to his office and bring this lawyer, Bernstein, and Mr. Bond. They came to the office and started to tell their story. The District Attorney said that he thought the lawyers, Coakley and Lavelle, ought to be present as they were under accusation, and he called them to his office to answer the charge. Lavelle had been first employed by this Metropolitan Motors Company, you will remember; he had been their attorney, and, after he had concluded that there was something serious the matter, he had consulted Coakley. I hope that is not a criminal act. Many times lawyers are consulted by other lawyers. I regarded it with a great deal of pride when the day came in my life when I found younger members of the Bar coming around and asking me to help them in cases. If that is a criminal offence, then about half the lawyers in my city are guilty, and I am particeps criminis, because I think about half of the number have come to me and I have regarded it as the greatest compliment that could ever be paid me. Perhaps I have been complimenting myself too much, and I beg to say that it is through inadvertence.

So, Lavelle came to Coakley for some help—and, by the way, the evidence is, I think, in accordance with the fact, that Lavelle at that time was at outs with his former chief, the District Attorney, they were not freinds; but now the District Attorney, indignant at this report, summons these people in. Before Coakley arrived, Webber, the assistant, and Fox were brought into court—

MR. BOYLE. Not into court.

MR. REED. Yes—into Pelletier's court, this court which he had set up to try these gentlemen and to find the facts. It is undoubtedly true, as shown by the Bar Association evidence which was introduced to contradict Bernstein, that Bernstein had, before the Bar Association, testified to the fact that these two men, Fox and Webber, were having a hot dispute, they were up to the point now where the thing was to be sifted out. Had Mr. Fox made the charge to Mr. Webber which Mr. Webber reported to Mr. Pelletier? Fox immediately began to recede from it. Webber insisted upon it. And in that state of affairs, Coakley having come in, what transpired?

Coakley said—and the Bar Association evidence shows it now—"I have talked to three men in this case. I don't care anything about the disputes between these gentlemen. I never talked to them." Coakley knows—he is there on trial—that he has got to purge himself of that charge or that he will have to settle with Mr. Pelletier in some way. I know how he would have to settle out in my country. So Coakley says, and wisely says, "I had no talk with these two gentlemen. They are talking at second hand. I have talked with three men. I have talked with Mr. Bond, I have talked with Mr. Bernstein, and I have talked with Lavelle. Let them tell their story." And, as they told their stories, Coakley said, "Yes, I said that"—for there was nothing in the story for him to deny, and it did not bear out this foul aspersion which had been cast upon Pelletier. And so they went through, each repeating his story, and at the end Coakley said, "Now, everything, even that you have said, Bernstein, is true, except I did not tell you I was the 'Charlie' Murphy of New York."

The result of that investigation was that Fox's charge was not sustained, and there was no evidence he had made it except his statement to Webber, and it did not involve Mr. Coakley because Coakley had not talked to Fox.

Then the District Attorney, having threshed this out, said, "There appears to be nothing in this case or back of this except some jealousy between lawyers." And then, to show how that Bernstein had retracted every charge, or had, in other words, denied each charge which he had made, he turned to Pelletier and said, "I would like to have a hearing." If he had declared that he had said the thing Fox had charged, he could not have had a hearing. He could not have had the impudence, with all the impudence of his bold face—which, is after all, the thing God chisels character upon—he would not have dared to make that request. And Pelletier walks from the office and says, "There will be no hearing in this case."

How like an indignant man? I do not want to use your Honors as illustration, but suppose some other judge, and suppose such a thing as this had transpired, and then one of the parties had said, "Well, I would like to be heard, it being a matter where you are not obliged to give a hearing":—I can imagine that judge walking indignantly away and saying, "There will be no further hearings in this case, on this matter." How natural!

That is the Daniels case. That is the wicked thing that was done there. Distorted—twisted—why, the most innocent act in the world can be distorted and twisted into anything.

Now we come to the Peters case. The charge was assault with intent to commit rape. What are the facts? Peters lived in concubinage with his mistress—had done so for seventeen years. He would not admit that he had introduced her as his wife, but he took her up to Mr. and Mrs. Robbins' house, and they played cards, and then he came up the next morning. No matter what his excuse is—his admissions are here revealed so that this Court and every sensible man knows his purpose. I shall not discuss this case in detail, there are too many ladies here—but he grabbed her, and he pushed her, and he ran around

one room, and finally admitted he ran her into another room; and now, that evening when he came back, the woman's outraged husband said, "I ought to knock your block off, or your head off," and the woman in the house said, it being in another apartment, "Don't have this disturbance in my room." Then Mr. Peters stands up and says, "Why, he would not have touched me. I am too"—he meant to say—"too formidable a creature for even an outraged husband to strike."

It seems according to the code prevailing here they do not resort to more than hands or feet. I do not know. I am not criticizing the code. But, there are places where size does not count in affairs of this kind, but weapons settle questions of that sort.

Robbins went to the courts. He had this man arrested. What the testimony was before the Grand Jury I believe is not here, but there was enough testimony before the Grand Jury to get an indictment, and indictment was returned, and that is the end of the matter. I affirm it to be the law that an indictment is conclusive evidence in any court of law that there was sufficient reason for the indictment, when the indictment is a collateral matter brought into the case. There was evidence. On the other hand, if Peters told the truth, then there was only a common assault. Now, what happens? This man Peters refers this to five lawyers, and they all throw up their hands, and finally, after having Mr. Lavelle and also calling in the President of the Bar Association at this time,—Mr. Hurlburt, they agree to do what? They settle the civil injuries with the understanding that the case will be dropped. If that was wrong and wicked, then all were parties to the wickedness. It is the ordinary way of disposing of a certain class of injuries. I pass from that.

I intend to hurriedly run through the Buckley case. Here is an interesting story. All of it comes from the lips of one man, and he returns from Chicago to tell his tale. Upon what pressure, deponent sayeth not, because he has no information sufficient to affirm a belief. But he came back. What was developed? Little by little it came out on cross-examination that Ackerman & Brummel were leather merchants, that Buckley and four other people at least, worked at this place, that Ackerman & Brummel had been engaged in a fraudulent scheme to impose inferior leather upon their customers, that they had carried this man along to a state of perfection where they were employing or feeing the foremen in the factories of their customers, so that the foremen would pass the second-class leather as first-class leather, that three of the employees had discovered that fact and had purloined from the papers of the concern the checks and documents to prove that Ackerman & Brummel had been engaged in these frauds. Of course the possession of those instruments enabled them to put a tremendous pressure upon Ackerman & Brummel, in short to blackmail Ackerman & Brummel, and Ackerman & Brummel gave up $25,000 to these parties to buy their silence, and the negotiation for that settlement was carried on by Mr. Buckley. One of these blackmailers had undertaken to camouflage his blackmail under a pretended claim for a violation of a salary contract. Some time went by and Mr. Buckley, beyond any question, concluded that as the other

scheme had been so successful, he would practice it himself. Accordingly he put up a pretended claim of $55,000, which I believe, although I am not sure, was the exact amount of the aggregate blackmail levied in the other case, including the damages that had been paid by Ackerman & Brummel to one of their wronged customers. Buckley says he had a contract in writing which had not yet expired and would not expire for a year. He says he was performing his duty and was going on with his work. There was, therefore, no reason for a firm like Ackerman & Brummel to offer him anything extra. And then he says that they had agreed orally to pay him 10 per cent in addition on the sales, and it figured just about the amount of the aggregate blackmail levied before, including the settlement of damages. He is detected down at the hotel in conversation with one of these former clerks and blackmailers, and the conversation is of such a character—and we get it all from Mr. Buckley's lips—that, taken, as he says, over the dictaphone, it contained some things that he did not agree with, and when Mr. Pelletier read it to him the charge was brought home. Here is another man trying to hold this firm up. He was represented. He was called there, talked to, as thousands of others were, and then, what happened? Almost the next day he got together with Ackerman & Brummel, the claim was waived and the whole thing settled up.

By whom was he represented? He was represented by no less a person than Judge Logan, who, I understand is a most excellent lawyer and whose record upon the bloody fields of France shows that he would never lie down before a blackmailing scheme any more than he would turn his back upon a rain of German bullets. What was done here was to halt a blackmailing scheme, for, of course, Buckley, who knew of these papers and transactions, could have gone out and done infinite injury, and in the settlement, as Buckley declares, the papers were surrendered and the evidence of the wrongful acts of Ackerman & Brummel were taken up.

So that, we are being tried here upon the testimony of an attempted blackmailer, for the awful crime of halting him and his blackmailing expedition. This sort of man is put on the stand. I ask the court humbly, to read and analyze that story. There was only one witness, their witness.

Now, as to the Coté case, here is a tale that might evoke the laughter of the gods. I am not going to argue it at length. Your Honors will remember. Here is the man with the wife and children, and a small fortune, the Coté girl, the abandonment of wife and children, the turning over of large sums of money to the girl, the ring of the mother. Oh, God, how could a man give his mother's ring under such circumstances? Then you have the letter written by the girl, dictated by her, written by her, pretending to turn over an automobile. And yet, it was not a bill of sale or a will. Then the storm between these two people over the fact that the erring husband, the man who had erred against wife, was now erring against the mistress, and another woman had come into the case. And then they rage. I think this woman says—she might have said most anything—there was a separation, and

then—this must have been true,—she must have made some dire threats against Lawrence, or else, in his impecunious condition, he would not have hurried off to employ a lawyer before she had ever said anything at all about the automobile. Lawrence had appealed to his brother who had sent him $1,000 to hire a lawyer. Why? Do I need to tell this court or suggest to this court that Lawrence was alarmed and frightened most seriously, that in all human probability—just what Coakley said would transpire—she had threatened the Mann Act, that she had threatened all sorts of dire consequences, that she had threatened exposure and ruin, and all of that. And so, the $1,000 was paid. And then came the consultations with McCallum, and then came this suit. But, notice, the suit was for an automobile. The title was not given on this piece of paper, but if it had been, why did they send a copy of the notice to Lawrence? It was sent to Lawrence because they wanted Lawrence to know that the processes of the law were going to work out, that in the public forum they were going to drag forth the ugly skeleton of his life, that they were going to expose him, and if what Coakley told the District Attorney was true, it was but the first step in carrying out the threats to ruin and destroy this man, and hence the notice. More than that, when that notice was sent, this girl was already trying to get back her lover. She had been trying to telephone him. And the notice comes. Two conflicting tides of emotion meet there, of course,—the desire to get him back if possible, the desire to get revenge, if he cannot be gotten back, and a combination of the two where they meet, the desire to put the pressure on and force him back.

Just the natural thing in life. And now there was an indictment, and as a result of that indictment this blackmailing scheme was stopped. That's all.

MR. BOYLE. There was no indictment.

MR. REED. No indictment. Well, there was a threatened indictment, the mere statement, calling upon the District Attorney's office and asking "What is to be done?" and McCallum was called in there, undoubtedly with a kindly notion that McCallum was making a mistake and that he needed some suggestions of guidance to let him know where he was going. And from what I saw of Mr. McCallum on the witness stand he did need guidance about as bad as any man I ever beheld in the court room. Now, that is the case, if I talked upon it for a week. It was a successful arrestment and stoppage of blackmail. And years go by. Lawrence has been finally alienated from his wife, and then this girl comes here to tell her story, with the husband sitting beside her, and a doctor here to feel her pulse, and an attorney, I think, sitting in the back benches to represent her, and all for what purpose? Because she was not permitted to collect the harlot's tribute, —the last stick the man had, the last vestige of property he possessed.

The Emery case. What is the State's theory. The State's theory is that Coakley, Pelletier, Corcoran entered into a conspiracy to bring baseless criminal charges against Emery and wife and civil actions against Emery and Mrs. Chase, and thereby to extort money, that

in this conspiracy Daniel J. Gallagher got himself employed by Emery and Mrs. Chase for the purpose of aiding in the blackmail scheme by advising them to sett'e on Coakley's terms, that Thomas L. Walsh was also employed and gave the same advice as Gallagher and acted in concert with him, and regardless of any failure of the State to make a specific charge must have been as guilty as Gallagher. Now, what are the facts?

Papineau, whom you beheld upon the stand,—there are but few of his type, but you may have seen some specimens before, somewhat similar,—came to Coakley and told him that his wife had been debauched and stolen from him by Emery, that they had been living in adultery in Middlesex County, that he had brought civil actions for damages against Emery and Mrs. Chase, that these actions were still pending, that he had been badly used by his lawyers, and he wanted Coakley to punish these people criminally and recover damages from them civilly. Coakley went with Papineau to Corcoran, then the District Attorney of Middlesex County and a man of good record and presumably of good character. The facts were laid before him and were presented to the Grand Jury, and an indictment followed. Was that the proper place to bring this indictment? Did I not succeed in bringing from the lips of Mr. Emery himself admissions from which any jury in the land would have been warranted in finding a verdict that the charge be made was properly laid in Middlesex County? Do you remember how like a fox he turned and turned again upon his track? Whatever way he turned or ran he had to run through Middlesex County. There his wife's babe was born, in his own father's house, and there he had met her numerous times, and there they had visited. The question of the treatment of Mrs. Chase or of Emery or his wife is utterly immaterial so far as Pelletier is concerned. The indictment of the Grand Jury in Middlesex County conclusively establishes the fact that there was sufficient evidence produced to warrant the indictment.

Now, Emery employed detectives. And here is a somewhat comp'icated tale, but I think I can make it very simple. Emery employed detectives to watch Papineau and get him into trouble with women. This cannot be doubted, in view of the detective's report, in view of the admissions of Mr. Emery, in view of the statement of Mr. Papineau. Their idea was that Papineau was proceeding against them criminally, and that if they could get Papineau in the clutches of the criminal law then they could make him let go in their case, and so they employed these detectives. The purpose of the detectives is too plain for debate or argument. It is clearly shown that they were trying to get him mixed up with women, and to find some criminal charge against him, and this conspiracy to get him mixed up with women was concocted in this county. How was it discovered? Of course we are dealing with detectives. They are curious animals. I say it without hesitation, a decent man is never a detective. Before you can be a detective you have got to get yourself in the frame of mind where you will peep through keyholes, gain the confidences of men and then betray them, lift up the curtains of windows and put your sneaking eye to the crack, and whenever a man does that he has laid

honor aside before he does it, and when a man lays his sense of honor aside then there is no limit to what he will do except fear of the law. Now, they concocted that scheme over here of the detective talking to Papineau. The story would seem almost unbelievable, but their own witness tells it, and surely they will not repudiate aught that Papineau said: that the detective asked him who represented him. He learned that he had a lawyer in a casual conversation. He said Coakley. The detective said at the time he did not know him, but the next day said he did know him, that Coakley had once done him a great favor,— I am not sure but he said he saved his life.

MR. BOYLE. Saved him from prison.

MR. REED. Saved him from prison. He said, "I am going to tell you the truth. I am hired to watch you." He told Papineau. Papineau then goes to Coakley and tells him of this conspiracy to have him commit a crime, to catch him in an act, to induce him to do the act. It was a crime. So stands the evidence, and on that evidence an indictment was found against this detective and against Emery and against Robb. It was properly found. And why should not the District Attorney in view of that evidence do exactly what he did when he called this detective in, a man licensed under the laws of Massachusetts to hold himself out to the public as a detective, an officer of the law, and say to him, "I want to know about this thing," and this detective says, "Although an officer of the law I will tell you nothing." And so he sent it to the Grand Jury, and they were indicted. They ought to have been indicted. They ought to have been indicted here.

The question comes then, "Why were they not prosecuted?" Well, we put in no evidence, and so I am left in this case, too trifling a thing to in itself have caused us to go through the long labor of a trial unnecessary, without any other explanation except what we get naturally from the evidence. Why were they not prosecuted? Well, you heard Papineau's story. You find some other evidence in this case, and you discover from that evidence that Papineau had not told Coakley the truth about scarcely anything when he came there on the 6th of October. He told Coakley that he had his civil cases pending. They had been settled only a few months before for the pittance of $1,000.

He had told Coakley that he had been greatly wronged and outraged, and yet it transpired that this man had yielded the custody of his own child, and voluntarily agreed to a divorce to be granted to this woman, consented to it, instead of as he had told Coakley, the divorce being granted without proper notice to him. It transpired that while he yielded the custody of his own child, the child of his own loins, he brought a suit for the custody of the child of his wife's paramour and his wife. And so the cases drifted, that is all, until, grown old and stale, whether because of the absence of witnesses, whether because of the discovered unreliability of Mr. Papineau, for what reason, the long list of which has been given in these cases I have read, the District Attorney dismissed the case.

Now, that is the story, except this: that Emery, their witness, drags in Daniel J. Gallagher, drags in Walsh, tells a story that needs no

refutation in this court, I am very sure, for against the word of such a man as Emery shows himself to be in this case I would put the character of any honorable man certain that it would stand there like a granite shaft though all the foul birds of the air had desecrated it.

The Corcoran case. I think I shall spend but a moment on that case. What is there to it? In that case it was claimed that a man, the general agent of a wood company, had defrauded the company.

But there was a civil side to the case and there was an answer to these charges, in part at least. Now let us take the steps. It is brought to Mr. Pelletier by a reputable lawyer. He tells the reputable lawyer after he hears it, "Why, this is a civil controversy more than criminal; it does not belong here, and if I bring it your institution will try to collect that money and that will be the end of my case. We don't put that sort of a case in here." The lawyer protests. He finally says to him, "Well, now that is my opinion. But go and see Mr. Lavelle, my Deputy, an experienced man; if you can convince Lavelle that there is a case here well and good, you can take it to the grand jury." He does take the case to Lavelle, a man of many years' experience, who knows how these cases come and go and how often the processes of the criminal law are abused, especially where they concern foreign credits, and Lavelle gives the same answer. They go down to the lower court then and they get a complaint there. Then the lawyer on each side started to do exactly what Pelletier anticipated, dickering for the money. And they continue that course nine or ten times. It was read in the record here, I think, that Pelletier had wickedly caused the continuances, but behold it appeared that Pelletier did not even go into that court, and that the continuances were arranged by the lawyers that were interested in the financial business. Finally, having used these criminal processes to the extent they had, they undertook to go a step further and demand that this man's sister should give up her fortune. And then one of Pelletier's deputies said, "Oh, no. You cannot do that." Then the man was released on bond by agreement of the attorneys on both sides—released on nominal bail—in order that he might get out and help salvage this property and help to settle up these matters. Pelletier wrote it on a slip of paper and put it in the papers and then at last after this man had been out and been trying to help salvage the matter, and civil suits having been brought, the whole matter being in controversy in the civil courts, he dismissed the case as he ought to have dismissed the case. That is that case.

Now I have one more case—the Perry case. Perry—you will remember the little lawyer who came on the stand—Am I inconveniencing your Honors? I have carried you by the hour—

RUGG, C. J. We haven't asked you to pause, Mr. Reed.

MR. REED. I know I am wearying myself and I have no doubt I may be wearying the court, but I will be through now very briefly.

RUGG, C. J. I hope we have manifested no impatience. We certainly have felt none.

MR. REED. I know what a burden it is to listen to any man, especially myself, make a speech for two hours.

Now let's take this case. The State's theory is that Perry, Barry, Pembroke, Seratt, Bouve, Collamore and Rice were all engaged in a conspiracy to steal automobiles. That their enterprise extended over three or four counties, complaints existing against them in Middlesex County, Tufts being the then District Attorney; that Corcoran collected a $5,000. fee, and afterwards he learned that there were complaints in Essex County, and likely to be complaints in Suffolk County, and other counties and he demanded $10,000 more; that he told these parties he could prevent indictments in any of these counties. I haven't any doubt he told them so. I haven't any doubt from what has developed that he would have unhesitatingly told any client he could have controlled this court; that Corcoran told him he could prevent indictments in Suffolk and had arranged for a hearing before the cases would be presented in Suffolk; that the fee was deposited in the bank; that Charles H. Innes was a party to the scheme; that Wells and Tufts were both implicated; and that Corcoran pretended to telephone to Pelletier, but the conversation was not heard. Now there is this long story, all told in great detail. I wouldn't, your Honors, believe one word of it coming from the lips that it did, after the charge had been made against Mr. Wells and Mr. Innis, after they had been drawn in. Whenever I find a man himself fleeing from the law begin to cast aspersions not on one, but two or three, that story ceases to have weight with me. Now what were the facts? Where does Pelletier come in? The case was in these other two counties. It seems indictments were returned, all of them still pending—at least one of them still pending where Mr. Perry should have been to plead the day he stood here testifying. There was an end to this case here, however, a Suffolk County end. The case was presented by the police to the Municipal Court. Perry and Barry were bound over. The case went to the Grand Jury in the usual course along with the regular grist and indictments were returned. The evidence was fully heard. Every fact in the possession of the District Attorney was submitted to the Grand Jury, and the Grand Jury notes have been introduced in evidence.

MR. BOYLE: You are in error, Senator, about indictments being returned. That was the case where Perry went before the Grand Jury.

MR. REED: Indictments were voted and not returned. The evidence was fully heard, and as I understand the Grand Jury notes are in evidence here. Every fact in the possession of the District Attorney's office was submitted in conversation with the officer. It had undoubtedly been said by the officer that charges were being made in Middlesex County and Essex County and that the cases were under investigation there, if not under indictment. Pelletier had said "Let Middlesex County wash its own dirty linen." Let me say to your Honors I understand it to be the practice where a crime is laid in three or four counties that the county first taking jurisdiction, the other counties yield jurisdiction: that if these facts be known, unless there

be some peculiar circumstances that would be the practice. There is no evidence as to just what follows. When he got his information through the police or through the deputies is undoubtedly reflected through the evidence—that is, Perry got it a day or two after the indictments had been voted, while it appeared that he, Pelletier, knew nothing. Perry and Barry appeared and requested to be heard before the grand jury. Now here was Perry a lawyer who, up to this time, had not been criminally involved. Barry, I think the evidence shows, keeping one of the largest automobile garages in this city. They asked to be heard. Grand Juror Cutler testifies that Pelletier went before the grand jury and said that Perry and Barry had called at his office and made a request that they be allowed to go before the grand jury. He said it was unusual, but that the grand jury had a right to grant the request if they wanted to do so. Grand Juror Russell tells substantially the same story. These men made their statement and there is not the slightest evidence that there was any interfering with or tampering with the grand jury. The grand jury in the exercise of its discretion, with all the evidence before it in the possession of the District Attorney or his deputies, voted no bills; and undoubtedly the grand jury, in my opinion, became convinced that there was a doubt about the case; were impressed by the fact that a lawyer, hitherto of unsullied reputation, and a prominent business man were wrongfully accused. Undoubtedly they were impressed with the fact that the evidence—the chief evidence in the case, as I think the grand jury notes will show, was that of a confessed thief who was turning State's evidence. Undoubtedly the experienced grand jury under these conditions, concluded to let these cases be tried elsewhere, and at least not to indict these two men. Now what happened? They then voted "no bill." How is Pelletier connected? Not a word of testimony to show that Pelletier knew anything about Corcoran's fees, or Corcoran's schemes, or Corcoran's plans. No evidence that he did an overt act in this case, except to make the statement of fact to the grand jury that these men wanted a hearing, a thing which was usual and proper. Conspiracy cannot be established—Pelletier cannot be made a party to Corcoran's scheme by the mere fact that Corcoran told his clients he could get them a hearing, a thing which is ordinarily granted to every decent lawyer. And whatever Corcoran may be today, at that time he was a lawyer in good standing.

Now I have gone through I fear, to the great weariness of the court, this list of cases which, together with the cases discussed by my colleague, Attorney General Boyle, complete the entire catalogue. I have just a few words, if your Honors please, to say in conclusion.

What is back of this case? A search has been going for three long years, according to the evidence. A dictaphone put in his office. Papers purloined from Mr. Coakley's office and the man who was engaged in the prosecution of these investigations convicted of receiving them criminally. The underground proceeds, nevertheless. Matches being convicted in New York, we find an attorney connected with Mr. Cabot going over to get Bond and to bring him here as a witness—no, let me correct that—to get Bond's affidavit; the same man getting the

affidavit of Matches; the same attorney bringing Matches here; these proceedings carried to the Bar Association, for three years books ransacked and papers overhauled and bank accounted inspected, and out of 80,000 cases at last these twenty are brought to trial.

What is the reason? What is back of this case? Is my evidence of conspiracy slight under these circumstances? It is better than any evidence of conspiracy offered by the State here. Why this attempt to drag this public official down?

Oh, I had almost forgotten. He made a speech in which he made a remark which could be vicious only when it was filtered through a vicious mind:

> "There is a dirty low down propaganda going throughout the city I am going to resign. Tell the man who tells you that he is wrong. If he persists tell him he is a liar. Back it up and I will nol pros the case."

And the crowd laughed. In the rough and tumble of the hustings, a thing like that is said. I have said it myself, and I think I am a law-abiding citizen. I said it to tickle the crowd. And these reporters who came in here, one of them representing the only paper that published the remarks—always the enemy of Pelletier—even he had to admit that it provoked laughter, and the last witness completely showed how farcical it was. Of course, if men hate another man, they can seize on things of that kind, and trifles light as air become huge mountains bellowing with fire and smoke. But, to the normal mind, there was no man there who could have thought that Pelletier was trying really to have people go out on the street and beat other people up for saying he was going to withdraw in that race. To treat it seriously is to make a jest of him who so treats it.

But what is back of this case? I do not know. Out of his twelve years' work there is no charge for the last three except these charges where his deputies alone are concerned, and out of the first six years there is no charge.

What, then, has Pelletier done? Where do we find the mainsprings of his offending? Was it because during the war he headed the Knights of Columbus and was the executive officer charged with the collection and expenditure of forty millions of dollars? Was it because that money went to France's stricken fields? Was it because the dignitary of his Church conferred upon him a badge of distinction? Is it because even now, through that society to which he belongs, soldiers who were coughing up their lungs, soldiers who are groping their way through the night of blindness, soldiers who are halting, crippled and broken, through the world are being cared for by numerous organizations of which he is the head? Does this diabolic prosecution spring from religious prejudice? Is that the thing that inspires Cabot and his crew, that makes them gather witnesses from the four quarters of the earth, that gives protection to the criminal and near criminal? Is that the sinister shadow which rises back of the scene? I do not know.

But this I boldly say, that I have never seen in all my life such digging in the catacombs of the past, such raking of the dust of time, such

malicious ingenuity, such fixed determination and, as I have witnessed the scene, I have thought of a story I once read of a gallant steed, high-headed, flashing-eyed, proud of soul, and a lizard fastened his crooked teeth into his flank and there hung on until, at last, the glorious steed, whose feet had spurned the desert sands, whose nostrils had drunk in the breath of morning, was dragged down to death.

I thank the Court.

RUGG, C. J. Mr. Attorney General, it is so near the end of the day we offer you the choice and let you determine whether you begin your argument tonight or wait until half past nine tomorrow morning.

MR. ALLEN. I think, may it please the Court, that, in view of the nearness of the closing hour, I will wait until tomorrow morning.

(Adjourned 9.30 A.M., Tuesday, January 24, 1922.)